	UNITED STATES D FOR THE DISTRICT O	ISTRICT COURT FILED F MASSACHUSETTS IN CLERKS UFFICE
MADHU JAIN, PLAINTIFF v. A CAPE ANN WHA WATCH, INC. DEFENDAN)	C.A. No. 05 14267 MEL2 P 4: 33 U.S. DISTRICT COURT DISTRICT OF MASS.

PLAINTIFF'S REQUESTS FOR RULINGS OF FACT

A. Background

- Plaintiff, Madhu Jain, is 57 years old, married, a college graduate and resides in New Delhi, India (Trial transcript, Madhu Jain, p. 5).
- 2. Madhu Jain fell and was injured getting off the Cape Ann Whale Watch ship, the Hurricane II, on 8/19/04 (Trial transcript, Madhu Jain, p. 5).
- 3. As Madhu Jain was getting off the ship she fell and fractured her right ankle and received surgery and had screws and plate placed inside the right ankle (Trial transcript, Madhu Jain, p. 6).
- 4. E.M.S. workers administered first aid and noted in their report that Ms. Jain was pale, had blood pressure initially at 80/40 and had an obvious deformity of her right ankle and they transported her to Addison Gilbert Hospital (Ex. 19).
- 5. At Addison Gilbert she was diagnosed as having a displaced bimalleolar fracture with subluxation of the ankle joint that included a displaced fracture of the fibular and a fracture of the medial malleolus (Ex.14).
- 6. Although, later, she could not recall the gangplank being slippery, plaintiff is quoted, in mediately upon hospital admission, in the Addison Gilbert Hospital record, as stating that it was slippery coming off the boat (Ex. 14).

- 7. Surgery was performed at Beverly Hospital, under general anesthesia, and, after a fully threaded cortical screw was placed lag fashion, a seven hole Synthesone-third tubular side plate was affixed to the displaced lateral fracture with 3 proximal and 3 distal screws (one fully threaded cortical screws and two cancellous screws) and the medial malleolus fracture was reapproximated with two 44mm, partial threaded 3.5 screws (Ex. 14).
- 8. The screws and plates are presently still inside the plaintiff's ankle (Trial transcript, Madhu Jain, p. 6).
- 9. The hospital charged \$10,086.30 for her inpatient stay (Ex. 8).
- 10. The anesthesiologist charged Ms. Jain \$1,430.00 (Ex. 12).
- 11. Ms. Jain's vacation to the U.S.A. was brought to an abrupt end (Trial transcript, Madhu Jain, p. 27).
- 12. Ms. Jain was forced to impose upon relatives for a place to convalesce (Trial transcript, Madhu Jain, p. 27).

B. The Fall

- 13. To leave the ship by way of the gangplank Madhu Jain had to step up to get onto the tcp end of the gangplank (Trial transcript, Madhu Jain, p. 15).
- 14. Madhu Jain did not recall crewmembers helping her off or warning her of slipperiness (Trial transcript, Madhu Jain, p. 16).
- 15. Madhu Jain couldn't reach the gangplank handrails when getting up on ramp (Trial transcript, Madhu Jain, p. 48, 54).

- 16. Madhu Jain testified that she didn't hear any crewmember tell her to hold onto the handrails (Trial transcript, Madhu Jain, p. 17).
- 17. Madhu Jain testified credibly one foot was on the gangplank and the other foot was lifted at the immediate time of fall (Trial transcript, Madhu Jain, p. 19).
- 18. Madhu Jain slipped at the point of just having put one foot on the gangplank (Trial transcript, Madhu Jain, p. 17).
- 19. Madhu Jain's left foot probably never reached the gangway-walking surface (Trial transcript, Madhu Jain, p.54).
- 20. Madhu fell at the very beginning of the gangplank while in midstep getting up onto the gangplank (Trial transcript, Madhu Jain, P. 54).
- 21. Ms. Jain could not reach the handrails at the place where she got up onto the gangplank to leave the ship (Trial transcript, Madhu Jain, p. 54).
- 22. Ms. Jain testified credibly that she fell at the gangplank top and never took steps on the gangplank itself (Trial transcript, Madhu Jain, p.54).

C. Witness Testimony

- 23. Lisa Bodner, Alice Berg and Jonathan Bodner were passengers on the Hurricane II on the relevant date who reside in New Jersey (Ex. 11a, 11b and 11c).
- 24. Lisa Bodner, Alice Berg and Jonathan Bodner's depositions were put into evidence.
- 25. Lisa Bodner, a witness from New Jersey testified at her 6/21/06 deposition, that irmediately before the time of the fall the gangplank was slippery and that after she got off the ship, before Ms. Jain, that she called up top her mother [who was still on the ship with the children to be careful because the ramp was a little slippery (L. Bodner Deposition, Ex.11c, p.10).

- 26. Ms. Kusam Jain, a passenger descending before Ms. Jain testified that she remembers thinking that she should alert Ms. Jain to danger because a person in front of her barely saved himself from falling (trial testimony day 1).
- 27. Ann Berg, a witness testified that she was behind the Plaintiff by six feet with her husband, oldest granddaughter and her grandchildren. (A. Berg deposition, Ex. 11b, p.12).
- 28. Ann Berg, a witness from New Jersey testified that she heard her daughter, who had already gotten off, call to her to take hold off the kid's hands because it's slippery (A. Berg deposition, Ex. 11b, p.12).
- 54. Jonathan Bodner, another passenger, "I do remember people (passengers) saying the gangplank was slippery." (J. Bodnar deposition, Ex. 11a, p.9).
- 29. At the time Madhu Jain fell the gangplank was slippery and another passenger had almost slipped on it (Exs. 11a, 11b, 11c and testimony of Varnit Jain day 1).
- 30. S darth Jain, a passenger, testified that the gangplank was wet at the time Ms. Jain was attempting to leave the ship (Trial testimony day 1).
- 31. Jonathan Bodner testified that he did not feel there was anything adequate to grab onto that there definitely were not two handrails that you could grab (J. Bodnar deposition, Ex. 11a, p. 13).
- 32. Jonathan Bodner testified that no crewmember told him to hold onto the handrail. (J. Bodnar deposition, Ex. 11a, p.9)
- 33. Jonathan Bodner testified that other passengers said the gangplank was slippery before Ms. Jain fell (J. Bodnar deposition, Ex. 11a, p.9).

Jonathan Bodner testified that the gangplank was slippery and he could feel his sneakers slipping when he stepped on it (J. Bodner deposition deposition, Ex. 11a, p.11).

D. Injuries

- 34. Madhu Jain's right ankle is presently of easily noticeable greater circumference than her left ankle due to her fall (Ankle viewed at trial and Ex. 1,2).
- 35. On Madhu Jain's right ankle there exists 2 scars, one scar with a lot of discoloration and a second purple scar is present on the other side of the right ankle (Trial transcript, Madhu Jain, P. 7, photos, Ex.1, 2).
- 36. For five or six months after her fall the plaintiff was unable to walk (Trial transcript, Madhu Jain, p. 27).
- 37. Ms. Jain still experiences pain and from the injury (Trial transcript, Madhu Jain, p. 37).
- 38. Ms. Jain had to use a wheelchair and later a walker and was not to walk for 5 to 6 months (Trial transcript, Madhu Jain, p. 27).
- 39. Ms. Jain missed four months of work and has a continuing diminished capacity to perform certain aspects of her occupation such as going on visits to client's factories to do tests and collect funds. It is difficult to calculate any future wage losses because Ms. Jain was self-employed and her income was shared with family and was based on yearly profits (Trial transcript, Madhu Jain, p. 35).
- 40. Ms. Jain is slowed in her activities and is generally less active than before (she was in good health prior to injury (Trial transcript, Madhu Jain, p. 27, p. 37).
- 41. P aintiff has gained 7 or 8 kilos (15-17 pounds) in weight since the injury most likely due to inactivity (Trial transcript, Madhu Jain, p. 37).
- 42. M.s. Jain has suffers a permanent reduction in her ability to enjoy life and do things as a result of her injury.

- 43. Presently Madhu Jain experiences decreased stamina (Trial transcript, Madhu Jain, p. 3.4).
- 44. Presently Madhu Jain has difficulty standing for any extended periods. Sitting for any significant length of time causes her leg pain (Trial transcript, Madhu Jain, p. 35).
- 45. Presently, because of her injury, she experiences regular pain and has become slower ir many of her activities (Trial transcript, Madhu Jain, p. 37).
- **46.** Madhu Jain testified credibly that she is presently able to walk for exercise far less than she could before the injury and has had extreme difficulty walking barefoot and is unable to jog. (Trial transcript, Madhu Jain, p. 59, Ex. 6)

E. Expert Testimony

- 47. The clamps that hold the vertical stanchions to the horizontal stanchions are unsatisfactory in a gangplank specification and the handrails are supposed to be without any interruptions at all for users (Trial transcript, Capt. Culver, p. 15).
- 48. Captain John Culver testified credibly that a standard angle for a gangplank is around 8 degrees and Exhibit 3 shows gangplank with an angle of probably 10-15 degrees. (Trial transcript, Capt. Culver, p. 18).
- 49. Gangplanks can have handrails that curve around at the ends rather than abruptly end as depicted in the second unrelated gangplank in the background of the photograph of the gangplank of the Hurricane II (Ex. 3).
- 50. Captain John Culver testified credibly that the gangplank is steeper than it should have been (Trial transcript, Capt. Culver, p. 18).

- 51. Captain John Culver testified credibly that, to his knowledge, diamond plate is not used on gangplanks; it is not a non-skid application. (Trial transcript, Capt. Culver, p. 19).
- 52. Captain John Culver testified credibly that, in his experience, he never observed diamond plate being used as a gangplank (Trial transcript, Capt. Culver, p. 20).
- 53. Captain John Culver testified credibly that the normal gangplank uses what is called non-skid (Trial transcript, Capt. Culver, p. 22)
- 54. Captain John Culver testified credibly that non-skid has a grain to it, a rough surface something similar to asphalt shingles (Trial transcript, Capt. Culver, p. 23). David Dubois (defense expert witness) testified that rough surfaces had more favorable coefficients of friction (trial testimony).
- 55. Captain John Culver testified credibly that non-skid, by analogy is paint with sand and that it dries and has a sandpaper effect (Trial transcript, Capt. Culver, p. 23).
- 56. Captain John Culver testified credibly that Merchant Marines and Navy put batons, U shaped metal things, where the foot can rest when descending (Trial transcript, Capt. Culver, p. 24).
- 57. Captain John Culver testified credibly that diamond plate was unsafe for use on incline surfaces (Trial transcript, Capt. Culver, p. 38).
- 58. Captain Jeff Eagan testified that the ramp was sometimes at a 10-15 degree angle to the ground (Trial testimony).
- 59. The gangplank got slippery when it was wet and that, on occasion, passengers were warned by the crew of that fact (Trial testimony).
- 60. It Captain Culver's report he states that as the downward angle of the gangway ir creases, the traction it provides is decreased (Ex. 20).

- 61. In Captain Culver's report he states Navy and commercial gangway manufacturers have the top handrails smooth for the entire length with no obstructions such as clamps holding the top rail (Ex. 20).
- 62. Although not necessarily controlling law, in Captain Culver's report, he illustrates comparable regulations such an O.S.H.A. requirement mandating the elimination of slippery surfaces in immediate working areas and other regulations that suggest a maximum slope not greater than 8.33% and that gangways should be kept clear of any substance likely to cause a person to slip or fall and if that is not possible, a warning should be given (Ex. 20).

F. Exhibits

- 63. A photograph of the gangplank depicts the gangplank protruding overhanging the side of the Hurricane II so that it overhangs the ships deck. (Ex.3).
- 64. The photographs depict the upper handrail has clamps that could inhibit grasping of the handrail, as they appear difficult to grasp comfortably (Exs. 3,4).
- 65. A photograph of the gangplank, used by both parties at trial, depicts that it is sloped downward at a significant angle (Exs.3, 4).
- 66. A photograph of the gangplank depicts tubular top rails that do not substantially extend out beyond the shipside upper clamps interrupting the handrail (Ex.4).
- 67. A photograph of the gangplank depicts a substantial space between the top handrail and the ship (Ex. 3).
- 68. A photograph of the gangplank depicts that the walking surface of the gangway is metal plate and does not have battens or abrasive strips (Ex.3, 4).
- 69. There is no transition plate at the place where passengers go from the ship's deck to get onto the gangplank (Ex. 3).

Madhu Jain, by counsel,

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July 12, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party and any party appearing pro se by (first class mail postage prepaid) or the true delivery.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11267-MEL

MADHU JAIN,

TRANSCRIPT OF TRIAL PROCEEDINGS
TESTIMONY OF MADHU JAIN

Plaintiff,

(Excerpt)

V.

A CAPE ANN WHALE WATCH,

INC.,

Defendant.

BEFORE: The Honorable Morris E. Lasker, Senior United States District Judge

John J. Moakley United States Courthouse
Courtroom No. 20
One Courthouse Way
Boston, Massachusetts 02210
Monday, June 11, 2007

Marcia G. Patrisso, RPR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3507
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

		Page 2	Page 4
1	APPEARANCES:	1	MR. CONIARIS: Madhu Jain, could you please come
2		2	up and have a seat where Kusum was.
,	LAW OFFICE OF JEFFREY C. CONIARIS	, 3	MADHU JAIN, sworn
3	By: Jeffrey C. Coniaris, Esq. 84 State Street, 6th Floor	4	THE CLERK: Please be seated. Would you give
4	Boston, Massachusetts 02109	. 5	your full name to the Court, spelling your last.
1	On behalf of the Plaintiff	, 6	THE WITNESS: Madhu Jain, M-A-D-H-U J-A-I-N.
5	GETPLII O 0 CA PONELLE	7	THE COURT: Thank you.
6	CETRULO & CAPONE LLP By: Michael J. Rauworth, Esq.	8	MR. CONIARIS: May I approach the witness, your
	Two Seaport Lane, 10th Floor	. 9	Honor? She just
7	Boston, Massachusetts 02210	10	THE COURT: Yes.
l _	On behalf of the Defendant	11	Am I correct this is the plaintiff?
8	ALCO PRECENT. Tamila Vani Latarrata	12	MR. CONIARIS: Yes.
9	ALSO PRESENT: Tamjid Kazi, Interpreter	13	THE COURT: Ms. Jain, as I asked your relative,
11		14	would you keep your voice up, please, because I have
12		15	some trouble hearing. There's a microphone there.
13		:16	THE WITNESS: Okay. Okay.
14 15		. 17	I want interpreter.
16		:18	MR. CONIARIS: Okay. We have an interpreter
17		19	here, your Honor, and she would like an interpreter.
18		20	THE COURT: He's the one I'll ask to keep his
19 20		21	voice up.
21		22	TAMJID KAZI, sworn
22		. 23	THE COURT: Thank you, sir. You'll keep your
23		24	voice up. If you can hear the witness, that's for you
2 4 25		25	to decide; I have to hear you, okay?
123	· · · · · · · · · · · · · · · · · · ·		Control of the contro
		Page 3	Page 5
1	INDEX	1	I'm talking to you, sir. I'm not asking you to
2		2	translate that. Thank you.
,	Direct Cross Redirect Recross	3	DIRECT EXAMINATION
3 4	WITNESSES FOR THE	4	BY MR. CONIARIS:
1	PLAINTIFF:	5	Q. Good morning, Ms. Jain. Where do you presently
5		6	live?
	MADHU JAIN	7	A. New Delhi, India.
6	By Mr. Coniaris 4	8	Q. And how old are you today?
7	By Mr. Coniaris 4 By Mr. Rauworth 39	9	A. I'm 57 years old.
8	~,	10	Q. Are you presently married?
9		11	A. Yes.
10	EXHIBITS	12	Q. How long have you been married?
11 12	Exhibit No. Description In Evd. 1 Photograph 9	13	A. For the last 33 years I'm married.
13	1 Photograph 9 2 Photograph 9	14	Q. Okay. Do you have any children?
14	3 Photograph 13	15	A. Two.
15	4 Photograph 14	16	Q. And what's the highest level of schooling that
16	5 Shoe 23	17	you've reached?
17	6 Plaintiff's responses to defendant's interrogatories 62	18	A. I completed college.
18	interrogatories 02	19	Q. Now, you got injured on the Cape Ann Whale Watch on
19		20	August 19th, 2004; is that correct?
20		21	A. Yes.
21		22	Q. Can you describe your injury?
22		23	MR. RAUWORTH: Objection.
24		24	THE COURT: Mr. Coniaris, I'd ask you to keep
25		25	your voice up.

	Page 6	1	Page 8
1	MR. CONIARIS: Okay.	1	MR. CONIARIS: Okay. And, your Honor, if I
2	MR. RAUWORTH: Your Honor, I'm not sure if the	2	could introduce into evidence, after you had just seen
3	question is asking for a physical description of the	3	them, a couple of pictures of the scars.
4	injury or the ever ts.	4	· · · · · · · · · · · · · · · · · · ·
5	- •		THE COURT: Any objection?
6	THE COURT: What was question?	5 6	Can you tell us who took them?
7	MR. CONIARIS: I asked, "Can you describe your	7	MR. CONIARIS: I think Mr. Rauworth did. This
8	injury?" And I can certainly ask another ask a different questior.	1	one I believe Mr. Rauworth did; this one I think the
9	THE COURT: I know it's not intended to be a	8	family did.
10		9	THE COURT: If she testifies that those are
11	technical medical question. I'll allow the question.	11	photographs of her ankle, that will be all right. It
12	•		will be admissible.
13	THE WITNESS: As I was getting off the Cape Ann,	12	BY MR. CONIARIS:
14	I fell down and I hurt I had both my ankles fractured	13	Q. Ms. Jain, I'm just going to show you a picture of
1	[sic], and I needed to get surgery. And I have screws	14	your ankle
15	and plates joined inside that.	15	THE COURT: You're showing her a picture. What
16	BY MR. CONIARIS:	16	is it?
17	Q. Do you have any scarring, or is there anything else	17	MR. CONIARIS: Okay. I'm sorry.
18	that we can see with your ankle?	18	BY MR. CONIARIS:
19	A. Yes, I do.	19	Q. Miss Jain. I'm showing you a picture. What is it?
20	MR. CONIARIS: Can we exhibit her ankle to the	20	A. (In English) I think it's my foot.
21	Court, your Honor?	21	(Through the interpreter) I think it's my foot.
22	THE COURT: If she doesn't mind.	22	BY MR. CONIARIS:
23	MR. CONIARIS: If I may, can I just approach?	23	Q. Is that an accurate depiction of your foot?
24	THE COURT: Do you want to come here?	24	A. Yes.
25	Counsel wants to come, too.	25	Q. And I'm going to show you another picture. Can you
	Page 7	}	Page 9
1	MR. CONLARIS: Jennifer, can you bring those	1	tell me what that is?
2	photos up, too, please?	2	A. Yeah, I think it's also my foot.
3	THE COUF.T: I would note a mark, and it's	3	Q. Is that an accurate depiction of your foot?
4	purplish.	4	A. Yes, it's right.
5	MR. CONLARIS: Can we compare that ankle with	5	MR. CONIARIS: Okay. Can we mark these, please?
6	the other ankle, your Honor?	6	MR. RAUWORTH: Can I see them?
7	THE COUF.T: Yes. I'm glad she only has two	7	MR. CONIARIS: Sure.
8	ankles.	8	THE COURT: Can I ask counsel, please, to mark
9	MR. CONLARIS: Now, can you put them both up	9	their exhibits in advance?
10	there together?	10	MR. CONIARIS: I'm sorry, your Honor.
11	And if I may, I'd like to draw the Court's	11	THE COURT: I mean okay.
12	attention to the difference in size between those	12	THE CLERK: The full foot will be Exhibit No. 1,
13	ankles, especially can you put them like this?	13	and the blowup is Exhibit No. 2.
14	THE COUF.T: I observe a somewhat greater	14	So marked and entered.
15	circumference of the injured ankle.	15	(Exhibit Nos. 1 and 2 were received into
16	MR. CONIARIS: And if I may point out to the	16	evidence.)
17	Court, there also is a lot	17	MR. CONIARIS: Thank you.
18	THE COUFT: There is a scar.	18	BY MR. CONIARIS:
19	MR. CONIARIS: there's also a lot of	19	Q. Now, going back to August 19, 2004, can you tell us
20	discoloration right around this scar	20	how your day began?
21	THE COUF.T: Yes, there is. Around the scar.	21	A. I got up in the morning, I took a shower, I took my
22	MR. CONIARIS: and also around this scar.	22	breakfast we all were very happy and we left for
23	Can we turn that around? Because that's quite	23	whale watching.
24	prominent.	24	Q. Who went with you to go whale watching?
25	THE COURT: There's a purple scar.	25	A. My son, my sister-in-law and my nephew.

	Page 10	i	Page 12
1	Q. And how did you get to the whale watch?	1	Q. How about dizziness? Do you have any problem with
2	A. My nephew crove us up to that point.	2	dizziness?
3	Q. Okay. Now, what happened at the whale watch prior	3	A. No.
4	to you getting onto the ship?	4	Q. Have you fainted unexpectedly in the last ten years?
5	A. There was some time before it would start, so we	5	A. No, never.
6	just looked aroun 1. There were shops, and we bought a	6	Q. At some point you wanted to get off the boat?
7	few gold rings and chips and walked around the ship.	7	A. Once the boat came to a halt, everybody was getting
8	Q. Do you recall what the weather was?	8	down at that time.
9	A. The weather was good.	9	Q. And do you have an idea of how many people got off
10	Q. Okay. And at some point you got on the boat?	10	before you, or did you get off first, or were you the
11	A. You mean, what time we got inside the boat?	11	last where were you in terms of the order of the
12	MR. CONIARIS: Oh, no. I just said to her, "At	12	passengers leaving?
13	some point you got on the boat?"	13	A. We were standing in a queue. And the boat was
14	THE WITNESS: Yes.	14	basically full. There were approximately 100 people.
15	BY MR. CONIARIS:	15	Q. And people got off before you?
16	Q. And did the v/hole party that had come up to	16	A. Yes.
17	Gloucester with you, did they get on the boat with you?	17	MR. CONIARIS: May I use a couple of photos
18	A. Yes.	18	here, your Honor?
19	Q. And at some point the boat left the dock?	19	THE COURT: I'm sorry?
20	A. Yes.	20	MR. CONIARIS: Can I use a couple of the
21	Q. Can you describe the ride out on the boat that day?	21	pictures?
22	A. It was very nice weather. It was a little bit	22	THE COURT: Yes.
23	windy, and there was bright sunshine.	23	BY MR. CONIARIS:
24	Q. And did you see any whales, while you were out there?	24	Q. I'm going to
25	A. Yes.	25	THE COURT: Would you refer to the exhibit
	Page 11		Page 13
1	Q. And when you were out there, can you describe the	1	number?
2	clothing that you were wearing on the whale watch trip?	2	MR, CONIARIS: This will be 3.
3	A. (In English) Something like this, salwar, kameez,	3	THE CLERK: Photo of the plank, that will be
4	dupatta.	4	Plaintiff's Exhibit 3.
5	(Through the interpreter) I wore something like	5	(Exhibit No. 3 was received into evidence.)
6	this, comprising of salwar, kameez and dupatta.	6	MR. CONIARIS: Would the Court like to pre-mark
7	THE COURT: Is that an Indian costume?	7	these, too? I'll get them.
8	THE WITNESS: (In English) Yes.	8	THE COURT: When you bring them up, yeah.
9	(Through the interpreter) Yes.	9	MR. CONIARIS: Okay.
10	BY MR. CONTARIS:	10	BY MR. CONIARIS:
11	Q. And can you describe the return trip back to the	11	Q. Ms. Jain, what's that a picture of?
12	dock or back to a dock on the whale watch ship	12	A. It seems as though this was the ramp that we got up
13	that day?	13	and got out of the boat.
14	A. You mean on the ship that very day?	14	Q. Is that an accurate picture of the ramp?
15	Q. Yes.	15	A. (In English) I don't remember it now, but it seems
16	A. We were sitting outside, and when there was a lot of	16	like it.
17	splash of water we would go back inside the cabin, and	17	(Through the interpreter) I don't clearly remember
18	then we would come out again to see the whale. We were	18	it, but it appears to be the one.
19	enjoying the trip.	19	MR. RAUWORTH: Objection, your Honor.
20	Q. And at some point the boat got back and docked; is	20	THE COURT: I don't know if she's the one to
21	that correct?	21	testify whether that's the gangplank or not, although
22	A. Yes.	22	she might remember.
23	Q. Do you have any problem with seasickness? Do you	23	But it was one like that? Is there any dispute
24	ever get seasick?	24	that
25	A. No.	25	THE WITNESS: Yes, it was like this.

	Page 14		Page 16
1	MR. RAUWORTH: I don't dispute that that's a	1	MR. RAUWORTH: Well, it cuts off. One can't see
2	photo of the vessel, your Honor, but I did note that	2	the end of it.
3	Ms. Jain answered in English, and the interpreter came	3	THE COURT: Yes, it cuts off, but I have no way
4	back in English with different words. He added a word.	4	of knowing whether it goes farther. I'll take your
5	THE COURT: All right. Am I correct that	5	representation.
6	counsel don't dispute that's the gangplank?	6	MR. RAUWORTH: Thank you.
7	MR. RAUWORTH: I have no objection to that being	7	BY MR. CONIARIS:
8	admitted, your Honor.	8	Q. Do you remember any crew members assisting you
9	THE COURT: Okay.	9	getting up onto that gangway that day?
10	MR. CONIARIS: May we mark this, your Honor?	10	A. No.
11	THE CLERK: Okay. This will be Plaintiff's	.11	Q. I'll ask that a different way. Did any crew members
12	Exhibit 4. And would you please state what it is.	12	help you that day to get up onto the gangway?
13	(Exhibit No. 4 was received into evidence.)	13	A. No.
14	THE COUR Γ: If counsel agree as to what it is,	14	THE COURT: I just want to be sure. You talk
15	we don't need to ask the witness.	15	about them helping her up. The accident you're not
16	MR. RAUWORTH: That's fine.	16	contending the accident occurred on her getting up, are
17	THE COUR Γ: What is it?	:17	you?
18	MR. CONIARIS: It's a picture of the top of the	18	THE WITNESS: Yes. That was the point on the
19	gangway.	19	gangway where the accident occurred, up at the top.
20	THE COUR Γ: From the side?	20	THE COURT: At the top?
21	MR. CONIARIS: Yeah. A side picture, upper	21	MR. CONIARIS: Yes.
22	gangway.	22	THE COURT: Okay. But are you is it your
23	THE COURT: Okay.	23	contention all right. Let me back up.
24	BY MR. CONIARIS:	24	Am I correct that you don't contend that she was
25	Q. Ms. Jain, nov, the time came for you to get off the	25	not on the gangplank?
	Page 15	- 45	
1	1090 10	i	Page 17
1	boat; is that correct?	1	MR. CONIARIS: She had one foot it's a little
1 2		1 2	
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	Page 18		Page 20
1	Q. So you answered no. You never got a chance to try	1	please, and exhibit to us where those handrails were in
2	to hold onto either one of those?	2	relation to you when you were stepping up onto the rail
3	A. No, I didn't even have a chance to hold on.	3	[sic]?
4	Q. So you recall that one foot was on the ramp. Do you	4	MR. RAUWORTH: Objection, your Honor.
5	remember which foot?	5	Foundation. I think she's indicated that she can't
6	A. Usually I step with my right foot first.	6	remember really any details about this situation, so
7	Q. Okay. And where was your left foot at the time when	7	THE COURT: If she could remember this the
8	your right foot was on the plank?	8	answer to this, then we have some inconsistent answers
9	A. I don't remer ber exactly, but maybe in the air.	9	you're prepared to comment on.
10	Q. Do you remember where your weight was placed at that	10	BY MR. CONIARIS:
11	time?	11	Q. Could you please just stand up?
12	THE COURT: I don't think that I could find it	12	A. (Witness complies.)
13	credible that she would testify "My weight was here or	13	Q. Now, if you were standing there and you were just
1			
14	there."	14	getting up onto the rail, if that was the situation
15	I'll sustain your objection to the question.	15	MR. RAUWORTH: Objection. Calls for
16	BY MR. CONIARIS:	16	speculation.
17	Q. Was your other foot, do you recall, lifted up off of	17	BY MR. CONIARIS:
18	the deck of the boat at the time when you fell?	18	Q did you at that time see the gangway?
19	A. (In English) I don't remember exactly.	19	A. Yeah, I might have seen the gangway.
20	(Through the interpreter) I don't remember exactly.	20	THE COURT: Okay. I note that she said she
21	THE COURT: Good for you. That's the truth.	21	"might have seen," which means she doesn't really
22	BY MR. CONIARIS:	22	remember.
23	Q. Did you make any attempt to try to hold onto these	23	BY MR. CONIARIS:
24	two areas here that stick out at the top rail of the	24	Q. Do you remember where these rails were relative to
25	gangway?	25	you?
	Page 19		Page 21
1	A. (In English) No, I don't remember. It happened so	1	A. The ramp was there, I remember. And, you know, it
2	suddenly. I simply don't remember.	2	happened so suddenly, I put one foot up and suddenly I
3	(Through the interpreter) I don't remember because	3	fell down. I couldn't even hold there.
4	it happened so suidenly. I simply don't remember.	4	Q. Could you explain
5	Q. From where you were, could you have reached these?	5	A. It didn't even reach my hand. My hand didn't even
6	MR. RAUWORTH: Objection. Objection.	6	reach there.
7	THE COURT: Sustained.	7	Q. Your hand couldn't reach these points here?
8	MR. RAUWORTH: Objection.	8	A. I tried to hold onto something, but I could find
9	THE COURT: I don't know that she's qualified.	9	nothing to hold onto.
10	Well, she might be.	10	Q. Do you remember if the ramp was slippery?
11	Ask her if go ahead.	.11	THE COURT: Sustained as to leading.
12	MR. CONIARIS: All right. I can do it. Sure.	12	MR. CONIARIS: Okay.
13	BY MR. CONIARUS:	13	BY MR. CONIARIS:
14	Q. When your fc ot was on the ramp immediately before	14	Q. Can you tell us the condition of the ramp on that
15	you fell, did you see where these handrails were? Did	15	day?
16	you observe them?	16	A. I don't remember it exactly. I remember that water
17	A. No, I don't reinember.	17	was splashing in and it was wet.
18	Q. That's fine. But you do recall that you never held	18	Q. And that's okay. That's fine.
19	onto them?	19	And you fell?
20	A. It happened so suddenly that I couldn't even catch	20	A. Yes.
21	it.	21	Q. Can you explain what you remember about falling?
22	Q. Could you explain, you "couldn't even catch it"?	22	A. I had a lot of pain. And I was very nervous as to
23	A. See, the moment I put one foot on the ramp and the	23	how I would go back to India.
24	other foot I lifted, I fell immediately and suddenly.	24	Q. Okay. Can you just tell us everything you remember
25	Q. Okay. Can you exhibit to us could you stand up,	25	about the fall if, in fact, you remember anything about
	2. Okay. Can you exhibit to us could you stand up,	20	acout the fair it, in fact, you remember anything about

١	Page 22		Page 24
1 1	it?	1	A. Right at the bottom where it was landing.
2	A. It happened so suddenly. And I remember I had a	2	Q. Were your feet on the gangway or were your feet off
3	lot I sustained ε lot of pain, and I was nervous.	3	it?
4	And I kept telling my son again and again, "How will I	4	A. As far as I remember, it was outside.
5	go back to India?" and "How am I going to meet your	5	THE COURT: I'm sorry?
6	dad?"	6	THE WITNESS: As far as I remember, it was
7	Q. Do you recall, did your clothes get stuck on	. 7	outside.
8	anything on that gangway before you fell?	8	THE COURT: Outside the gangplank?
9	A. No, not at all.	9	THE WITNESS: Right where the gangway stops, it
10	Q. And do you recall what kind of shoes you were	10	was just beneath that.
11	wearing on that day?	11	THE COURT: All right.
12	A. Sports shoes ike this one.	12	BY MR. CONIARIS:
13	THE COURT: Do you know what the undersurface of	13	Q. And what position were you lying in?
14	the sole of the shee was made of? Was it leather or	14	A. I might have fallen like this.
15	rubber?	15	Q. Indicating falling backwards?
16	THE WITNESS: I don't remember, but as far as I	16	A. Yes. I was laying on my back. And I also had some
17	recall, it should be something like this (indicating).	17	bruise on my right elbow.
18	THE COURT: Excuse me. I can come look.	18	Q. And an ambulance came?
19	THE WITNESS: I can come there.	19	A. Yes.
20	THE COURT: I see. Okay. Yes, I would say	20	Q. What do you remember about the ambulance crew, if
21	these have rubber soles.	21	there was one, at the time at the scene? What do you
22	MR. CONIARIS: I have the shoe.	22	remember about the crew and what you said and what they
23	THE COURT: Oh, you do?	23	said, if they said anything?
24	MR. CONIARIS: If you want, if the Court has	24	A. Nothing much. They also said that it appears that I
25	some interest.	25	have a fracture. I was nervous and I was afraid as to
	Page 23		Page 25
1	BY MR. CONIARIS:	1	how I would go back to India.
2	Q. I'm going to show you a shoe, Ms. Jain. Can you	2	Q. And at some point they put you in an ambulance and
3		1	
1	identify that?	3	took you to a hospital?
4	identify that? THE COUF.T: Let's make it an exhibit. I assume	3	took you to a hospital? A. Yes.
ı	THE COUF.T: Let's make it an exhibit. I assume you're offering it?	1	•
4	THE COUF.T: Let's make it an exhibit. I assume	4	A. Yes.
4 5	THE COUF.T: Let's make it an exhibit. I assume you're offering it?	4 5	A. Yes. Q. And what did they do for you at that hospital?
4 5 6	THE COUF.T: Let's make it an exhibit. I assume you're offering it? MR. CONIARIS: Sure. I can. Sure. Can we put	5	A. Yes.Q. And what did they do for you at that hospital?A. That hospital, perhaps, did not have facilities for
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE COUF.T: Let's make it an exhibit. I assume you're offering it? MR. CONIARIS: Sure. I can. Sure. Can we put an exhibit number on? THE CLERK: Okay. The shoe is Exhibit No. 5. (Exhibit No. 5 was received into evidence.) MR. CONIARIS: And this is the shoe that you were wearing on the day that you fell? THE WITNESS: Yes, this is my shoe. I have the other shoe with rie in India. BY MR. CONIARIS: Q. Thank you very much. Do you have the clothes that you were wearing that day? A. Yeah. I don't have that because they had to cut open the salwar, the pants, and but, you know, it was something like this: like kameez, the long shirt; and the salwar, like the lower pants; and the dupatta, the piece of cloth arcund my neck.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. Q. And what did they do for you at that hospital? A. That hospital, perhaps, did not have facilities for surgery, so they quickly shifted me to another hospital, because at the first hospital they mentioned that perhaps I would need surgery. Q. Okay. And how did you get to the other hospital? A. I went by ambulance. Q. Do you remember the name of that hospital? A. No, I don't remember. THE COURT: I take it there's no dispute as to what hospital it was. BY MR. CONIARIS: Q. And you arrived at that hospital. And in your first couple of hours there, what did they do for you? A. They might have conducted some tests on my ankle and legs, and they might have X-rayed and some other things. And at that point they had determined that I would need surgery. And it was late in the evening, so they said

	Page 26		Page 28
1	ankle.	1	A. Every morning I used to go out for one hour to one
2	Q. And at some point you had the surgery?	2	and a half hour.
3	A. The next morning I had my surgery.	. 3	Q. And I think I mentioned earlier did you have a
4	Q. Okay. And how long after you had the surgery were	4	job at this time?
5	you in the hospital?	5	A. Not a job, but we have our own business.
6	A. Approximate y four, five days I was there.	. 6	Q. Okay. Can you tell us what that business does?
7	THE COURT: Four or five days?	7	A. My husband and I, we have two businesses. And one
8	THE INTERPRETER: Yes, sir.	8	was in my name, so I was the proprietor of that. And
9	BY MR. CONIARIS:	9	between the two of us, we would manage I would assist
10	Q. And then you returned to where? Where did you go	10	him and manage the business properly.
11	after the hospital?	11	THE COURT: What was the nature of the business?
12	A. I went back to my sister-in-law's house, who lives	12	THE WITNESS: We have business in textiles. We
13	in Boston.	13	had enzymes for softening of textiles: one was for
14	Q. Okay. Now, your original trip, when had you planned	14	softening of textiles, the other one was for picking the
15	to leave? How much more from August 19th were you	15	starch. So with the textiles, we had to go there and
16	planning on staying?	16	try out our products.
17	A. (In English) End of August.	17	THE COURT: And did you get paid a salary?
18	(Through the interpreter) I think the 1st of	18	THE WITNESS: When we supplied the enzymes, we
19	September.	19	would get our commission from there. And it was good
20	BY MR. CONIARIS:	20	business. And until I had the accident, we used to
21	Q. And what did you plan on doing the remainder of your	21	have, like, 6 to 800,000 rupees per year.
22	vacation had this 10t happened?	22	THE COURT: That's the volume of business that
23	A. I had a lot of plans to roam about, see places. My	23	you did?
24	son was with me, so we had a lot of plans to roam about	24	THE WITNESS: Our profit was between 6 to
25	places.	25	800,000 rupees.
	Page 27	;	Page 29
1	Q. And you ended up staying at Kusum's house for a	1	THE INTERPRETER: There's a confusion because in
2	while; is that correct?	. 2	India we say lac, is 100,000 is one lac. So she was
3	A. Yes.	3	confused when I say "6 to 800,000." Six to eight lacs.
4	Q. Just generally how did you feel at the time when you	4	THE COURT: Can you estimate for me how much
5	were at Kusum's house; for example, pain-wise, or were	5	that is in dollars?
6	you able to get along around? Can you tell us	6	THE WITNESS: I can't.
7	something in those areas?	. 7	THE COURT: Okay. That's your word, I guess.
8	A. I was in very bad condition, and I was in a	8	BY MR. CONIARIS:
9	wheelchair. And my son would help me from the bed, put	. 9	Q. Okay. So prior to this, what was your income in the
10	me in the wheelchair and put me to the toilet. And in	10	years prior? Can you approximate that? Do you know?
11	that house they didn't have a bathroom on the ground	11	A. Since that fall I could not keep up with my
12	floor, so for a few days I couldn't even take a shower.	12	business. I could not pay any attention, I could not
13	THE COURT: How long were you unable to walk?	13	keep in contact with my agents and I could not go and
14	THE WITNESS: About five, six months I could not	14	follow up with them. And so, you know, we lost that
15	walk. And when I even went back to India I could not	15	business, and I was obliged to close down the business.
16	walk without a walker.	16	Q. So you no longer have the business?
17	BY MR. CONIARIS:	17	A. Because we could not go and collect the funds from
18	Q. Did you have any major health problems before this	18	our agents, and I could not follow up with them, and
19	fall occurred?	19	there was so much loss we were incurring, that we had
20	A. Nothing.	:20	decided that maybe this year we are going to close the
21	Q. Did you have any problems walking?	21	business.
22	A. No, never, because I took regular walk, morning walk	22	THE COURT: They're going to do what?
23	and jogging.	23	THE INTERPRETER: We're going to close the
24	Q. How often would you jog and how far could you jog	24	business.
25	for?	25	BY MR. CONIARIS:

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	Page 30		Page 32
1	Q. Presently, prior to closing the business, since this	1	interrogatories about any kind of financial loss. And
2	accident the business income has changed, has it?	2	so all that we're hearing now is out of the blue and is
3	A. Yes, because instead of profit we are incurring	3	prejudicially undisclosed to me. I didn't have a chance
4	loss.	4	to examine the witness about this at all in her
5	Q. Okay. That's understandable.	; 5	deposition.
6	In the first year after the accident, how much loss	6	THE COURT: Since she's here from India I'll
7	did you suffer in terms of how much less money did you	. 7	allow the testimony, and we can then decide whether it's
8	make than you made before?	8	properly to be considered or not.
9	•	: 9	MR. CONIARIS: Okay.
10	A. You see, my husband takes care of the financial side		· ·
	of the business. But I have an idea that we ran into so	10	THE INTERPRETER: Let me tell you what she said.
11	much loss that we could not collect the money that was	11	MR. CONIARIS: Okay, please.
12	due to us. So now we are at the point that we will be	12	THE INTERPRETER: She said, "The first year the
13	obliged to close the business.	13	loss was substantial because my husband had to come here
14	Q. Okay. Now, how much money actually like, say, in	14	to pick me up. And then after a while I had to go to
15	the first year after the fall, how much money less did	15	Houston
16	you make that year than you made the year before the	16	THE WITNESS: Dallas.
17	fall?	17	THE INTERPRETER: to Dallas, and stay there
18	A. There was enough less money I was making.	18	for 15 days to 20 days before I could return to India.
19	THE COURT: There was enough what?	19	So my husband came to Dallas to pick me up. So the loss
20	THE INTERPRETER: Less money that we made.	20	was very substantial in the first year.
21	BY MR. CONIARIS;	21	THE COURT: Well, ma'am, I understand why what
22	Q. Can you give us a figure, a certain amount?	22	you've just said would incur expense for your husband to
23	A. Slowly, slowly it started diminishing. The first	23	come here and so forth. How do you connect that to your
24	year it was half, and then slowly, slowly it has been	24	losses? What caused your losses, as you see it?
25	diminishing.	25	THE WITNESS: Our business is very competitive,
	Page 31		Page 33
1			•
2	Q. Okay. How much is half? THE INTERPRETER: Sorry?	1 2	and because my husband came here left his business
1	BY MR. CONIARIS:		and had to stay here for about a week, so in the
3		3	meantime, some other people grabbed the business.
4	Q. How much is half?	4	THE COURT: In a week?
5	A. I know the profit used to be approximately between 6	5	THE WITNESS: Yes. Because my husband was away
6	to 800 lac rupees, meaning 6 to 800,000 rupees. So the		-
7		6	for a week, and it's so competitive that we have to run
1	profits started diminishing, and we owed money, and	7	for a week, and it's so competitive that we have to run from day to day.
8	slowly, slowly, far from profit, we were running into	7 8	for a week, and it's so competitive that we have to run from day to day. THE COURT: And what is the source of your
9	slowly, slowly, far from profit, we were running into loss.	7 8 9	for a week, and it's so competitive that we have to run from day to day. THE COURT: And what is the source of your support at the present time?
9 10	slowly, slowly, far from profit, we were running into	7 8	for a week, and it's so competitive that we have to run from day to day. THE COURT: And what is the source of your support at the present time? THE WITNESS: My husband has a second company,
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1	Page 34	-	Page 36
1	business suffered?	1	what happened from there?
2	THE INTEF.PRETER: Sorry. Repeat?	2	A. From Kusum Jain's house I went to Dallas with my
3	BY MR. CONIARIS:	. 3	
4	Q. Did the business suffer in any other ways other than		son.
5		4	Q. Was that part of the plan originally, prior to you
6	the fact that your husband was absent from that business for that week?	5	getting hurt?
7		6	A. Yes. I had a plan to go to Dallas because my son studied there.
8	A. Yes. Also because I could not give much time, because, otherwise, I would have to go to the	7	
9		8	Q. Okay. Very good. And your husband came out?
10	business go with my husband, go for the trial of the	9	A. Yes, he came to Dallas.
11	products, and vis.t to pick up money and all that, which I could not continue to do.	10	Q. Why did he come to Dallas?
12		11	A. To pick me up.
13	Q. Okay. Just going over this slowly, after the	12	Q. Do you know how much it cost him to travel to
14	accident, for four months	13	Dallas?
1	MR. CONIARIS: she testified	14	A. I can't tell you exactly what it was, the airfare
15 16	BY MR. CONIARIS:	15	that time.
	Q you were unable to walk at all?	16	Q. Okay. Can you approximate what the airfare was?
17 18	THE WITNESS: Yes, about four months. And even	17	MR. RAUWORTH: Objection.
1	now I have problem. Once I walk a little more or I get	18	THE COURT: I don't think she's an expert on
19	up on the stairs, and even if I sit for a long time, I	19	that.
20	feel that I need to lie down and take rest.	20	THE WITNESS: No, I cannot put an estimate.
21	BY MR. CONIARIS:	21	THE COURT: Maybe he put it on his credit card.
22	Q. Okay. So there were things that you were unable to	22	BY MR. CONIARIS:
23	do even after those four months?	23	Q. How are you today in terms of your health? Has
24	A. Yes, that's true.	24	anything changed since the fall that you took?
25	Q. Can you give us an example of one thing you were	25	A. See, I'm not as active as I used to be before, and I
	Page 35		Page 37
1	Page 35 unable to do?	1	Page 37 cannot participate in the things that I used to before,
1 2			
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2	unable to do? A. Yes. One thing is that I cannot stand up for a long	1 2	cannot participate in the things that I used to before, and I've become somewhat slow in everything, in all my
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THE COURT: Stiff? THE INTERPRETER: Yes. THE INTERPRETER: Yes. THE INTERPRETER: Yes. THE INTERPRETER: Yes. THE WITNESS: And sometimes in the winter the pain accelerates. By MR. CONIARIS: Count is now in take a rest or pain. THE CLERK: All rise. Count is now in Count. THE COURT: We'll take a recess a ten-minute down or take a rest or put legs hanging? THE COURT: We'll take a recess a ten-minute recess at this time. COUNT is now in recess. THE COURT: We'll take a recess a ten-minute recess at this time. COUNT is now in recess. THE COURT: We'll take a recess a ten-minute recess at this time. CRESS-EXAMINATION THE COURT: Hank you, your Honor. CRCSS-EXAMINATION CRESS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A By MR. RAUWORTH: Thank you, your Honor. CRCSS-EXAMINATION CAN A Basically, my son got married, and I couldn't even dance there is a firm of any in recess. Count is now in recess			1	
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5 BY MR. CONIARIS: 5 A. Yes. 6 Q. You were planning to go on to Portland, Oregon, pain? 7 after our deposition in Boston, weren't you? 3 A. Yes. 4 A. Basically, my son got married, and I couldn't even dance there. 10 Q. You couldn't dance? 10 9 Q. You couldn't dance? 10 11 12 12 13 14 15 15 15 15 15 15 15	3	THE WITNESS: And sometimes in the winter the	3	A. Yes.
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7 A. Basically, my son got married, and I couldn't even dance there. 7 Q. You couldn't dance? 8 A. Passin description in description down, standing, sitting down. And then I used to go out for walks in the norming. You know, everything has become hard for ne. 8 A. Yes. 8 A. Yes. 9 Q. And on that day you were asked some questions in the presence of a court reporter like the one that's here, correct? 9 Q. And before the proceedings began you raised your hand and took an eath like you did here this morning. 16 A. Right now my leg is becoming somewhat numb and stiff, so I feel like, let me lift up my leg, it might feel better. 17 Q. Well, you did do — you remember doing that, don't you? 18 YMR. CONIARIS: No. How long does she sit down 19 THE COURT: I assume she did. This isn't a jury trial. 19 THE WITNESS: Yes, I did. 10 Well, you did do — you remember doing that, don't you? 10 THE WITNESS: Yes, I did. 11 THE WITNESS: Yes, I did. 12 YMR. CONIARIS: No. How long does she sit down 11 THE WITNESS: One hour to one and a half hour I can sit, but after hat, I begin feeling restless. 12 THE WITNESS: One hour to one and a half hour I can sit, but after hat, I begin feeling restless. 13 A. Yes. 14 DAY WAR. CONIARIS: O. What do you mean "restless"? Can you explain? 15 Q. O. Ad. A. Yes. 16 A. Yes, and and took an eath like you did here this morning. True? 16 Well, you did do — you remember doing that, don't you? 17 THE WITNESS: Yes, I did. 18 YMR. CONIARIS: No. How long does she sit down 18 YMR. RAUWORTH: Your Honor, if I may approach the witness? Thank you. 19 WAR. RAUWORTH: Handrails. 19 THE COURT: Thank you. Please be seated. 20 Mr. Rauworth? 21 Mr. Rauworth? 22 Mr. Yes, to the handrail. 23 BY MR. RAUWORTH: Thank you, your Honor. 24 CRGS-EXAMINATION 25 Cond morning, Mr. Jain. 26 Cond morning, Mr. Jain. 27 A. Yes. 28 DAY MR. CONIARIS: O. A. Yes, and an ath like you didn't say anything that was untrue, corre	5	BY MR. CONIARIS:	5	A. Yes.
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10 Q. You couldn't dance? 10 presence of a court reporter like the one that's here, 2 correct? 2	8	A. Basically, my son got married, and I couldn't even	8	A. Yes.
A. I feel pain in everything, like getting up, getting down, standing, sitting down. And then I used to go out for walk, in the norming. You know, everything has become hard for me. Q. How do you feel right now? A. Right now my leg is becoming somewhat numb and stiff, so I feel like, let me lift up my leg, it might feel better. Poly Q. Is that a com non occurrence? A. Yeah. If I sit down for quite a long time with my legs than a stiff, so I feel like, let me lift up my leg, it might feel better. Page 39 THE INTERPRETER: You mean how long it's been happen. Page 39 THE WITNESS: One hour to one and a half hour I can sit, but after hat, I begin feeling restless. BY MR. CONIARIS: Q. Okay. What do you mean "restless"? Can you explain? A. Yeah, I mean, then I feel like either let me lie down or take a r st or put my leg up so that my leg gets a little rest. MR. R. CONIARIS: Okay. That's all I have for right now. THE CUER: All rise. THE CUER: All rise. THE CLERX: All rise. Mr. RAUWORTH: Thank you. Your Honor. CRCSS-EXAMINATION A. Yes, perhaps I did. A. Yes, Derhaps I did. A. Yes, Der	9	dance there.	9	Q. And on that day you were asked some questions in the
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1 2	Page 42	:	Page 44
2	horizontal, correct?	1	pronunciation or something. I didn't really catch what
	A. Yes.	2	they were saying because of the accent."
3	Q. And you've observed that precaution all the time in	3	A. Yes.
4	your life, correct'	4	Q. "Question: So you're not sure if you understood
5	A. Yes.	5	everything that was said?
6	Q. In fact, it was your testimony that you do hold onto	6	"Answer: Maybe."
7	handrails generally well, not even generally	7	A. Yes, sir.
8	always, correct?	8	Q. "Question: But you recall someone speaking to all
9	A. Yes.	9	the passengers before the boat left?"
10	Q. Now, on the whale watch trip there were some	10	A. Yes.
11	announcements made with a public address system,	11	Q. "Answer: No, I don't remember that also.
12	correct?	12	"Question: So perhaps it happened, perhaps it
13	A. I heard announcements. Like whenever the whales	13	didn't, you just can't remember; isn't that right?"
14	would show up, they would say, "Now look at the whale."	14	And then there's an objection. And the answer is,
15	Q. Okay. But there were other announcements about	15	"Right."
16	safety matters, weren't there?	16	A. Yes.
17	A. I did not hear.	17	Q. So if there was an announcement, you did not you
18	Q. But you're not saying there were no announcements,	18	either didn't pay attention to it or you didn't
19	correct?	19	understand it; is that correct?
20	THE COURT: I'll take judicial notice of the	20	THE COURT: Well, that's a hypothetical
21	fact that at least on the ferry line from Martha's	:21	question. She said she doesn't know of any. You could
22	Vineyard to Cape Cod those instructions are said so fast	22	prove there was one.
23	and so jumbled, that I've never been able to understand	23	BY MR. RAUWORTH:
24	them. I'm not saying your client did the same thing,	24	Q. Now, if you'd kindly turn to page 61. Do you have
25	but that could be the case.	25	page 61, Ms. Jain?
	Page 43	!	Page 45
1	MR. RAUWORTH: I guess I'm not sure what I am	1	A. Yes.
2	able to do about that, Judge.	2	Q. And if you would kindly look at page 14?
3	THE COURT: There's nothing that you can. I'm	3	THE COURT: Page 14? You mean line 14?
4	just reacting. You can go ahead and ask your question	4	MR. RAUWORTH: I'm sorry.
5	and establish a record.	5	BY MR. RAUWORTH:
	MR. RAUWORTH: Sure.		
6		6	Q. Line 14 through line 18, okay?
6 7	BY MR. RAUWORTH:	6 7	"Question: And you recall that the man at the top
7 8	Q. Ms. Jain, could you kindly turn to page 56 in the	1	- · · · · · · · · · · · · · · · · · · ·
7 8 9	Q. Ms. Jain, could you kindly turn to page 56 in the transcript that's in front of you?	7	"Question: And you recall that the man at the top of the gangway told you to hold onto the handrails, correct?
7 8 9 10	Q. Ms. Jain, could you kindly turn to page 56 in the transcript that's in front of you? A. I need my specs.	7 8 9 10	"Question: And you recall that the man at the top of the gangway told you to hold onto the handrails, correct? "Answer: I don't remember. I didn't listen or hear
7 8 9 10	Q. Ms. Jain, could you kindly turn to page 56 in the transcript that's in front of you?A. I need my specs.Q. Where are your specs?	7 8 9 10 11	"Question: And you recall that the man at the top of the gangway told you to hold onto the handrails, correct? "Answer: I don't remember. I didn't listen or hear anything."
7 8 9 10 11 12	Q. Ms. Jain, could you kindly turn to page 56 in the transcript that's in front of you?A. I need my specs.Q. Where are your specs?Do you have page 56, Ms. Jain?	7 8 9 10 11 12	"Question: And you recall that the man at the top of the gangway told you to hold onto the handrails, correct? "Answer: I don't remember. I didn't listen or hear anything." Did I read that correctly?
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	Page 46		Page 48
1	confusing.	1	anybody.
2	MR. RAUWORTH: I'm sorry.	2	Q. My question is: You're not prepared to say that
3	THE WITNESS: I don't remember, I told you.	3	there was no crew there at all?
4	BY MR. RAUWORTH:	4	A. I didn't see, so I don't know.
5	Q. So you didn't listen to the man or you didn't hear	5	Q. Okay. Now, as you were on the gangway and falling,
6	him, correct?	6	you were not holding onto handrails; is that true?
7	THE COURT: Excuse me. I'm the fact-finder	7	MR. CONIARIS: Objection.
8	and	8	THE COURT: Overruled.
9	MR. RAUWORTH: I beg your pardon, your Honor?	9	THE WITNESS: The moment I stepped out and I
10	THE COURT: She didn't listen to something,	10	couldn't even reach the handles with my arms.
11	maybe, but I don': know what it is she didn't listen to.	11	BY MR. RAUWORTH:
12	MR. RAUWORTH: Well, it's to the man speaking to	12	Q. So the answer is you were not holding on; is that
13	her, but I'll ask it again.	13	correct?
14	THE COURT: Why don't you just ask questions	14	A. Yeah. As I put my one step, I couldn't even hold
15	instead of going to the deposition right away. Why	15	onto the handle. I couldn't reach the handle.
16	don't you just ask the same question you asked before.	16	Q. You
17	MR. RAUWORTH: Sure.	17	THE COURT: Obviously she couldn't reach and she
18	BY MR, RAUWORTH:	18	wasn't holding on.
19	Q. As you appreached well, strike that.	19	MR. RAUWORTH: Right.
20	As you approached the gangway to leave the Hurricane	20	BY MR. RAUWORTH:
21	II, a man spoke to you before you stepped on the	21	Q. Now, you testified before that you recall that the
22	gangway, correct'	22	deck of the boat on which you were walking was wet,
23	A. You mean while getting down?	23	correct?
24	Q. Just before getting down.	24	A. Yes.
25	A. No.	25	Q. And you testified when Mr. Coniaris was asking you
	Pa == 47		_ 46
	Page 47		Page 49
1	Q. No one spoke to you at all?	1	questions that the ramp going away from the boat was
2	Q. No one spoke to you at all?A. I was talking to either my son or with Kusum, my	2	questions that the ramp going away from the boat was also wet, correct?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. No one spoke to you at all? A. I was talking to either my son or with Kusum, my sister-in-law, but with no other people. Q. So you said in this last answer, "I didn't listen or hear anything." You didn't listen to the man that was there, correct? THE COURT: You're assuming a man was there. MR. RAUW'ORTH: I'm trying to work with her testimony, your Honor, if I may. She's denying it, or she's apparently not remembering it now. THE COURT: You're entitled to put before me the fact that she said something inconsistent before. MR. RAUW'ORTH: Right. THE COURT: I'll accept the deposition without even asking the witness. But let's see what she remembers now. MR. RAUW'ORTH: All right. BY MR. RAUW ORTH: Q. Ms. Jain, you just told us you were speaking with people in your party, correct? A. Yes. Q. So you're not sure, as you sit here today, that there was no one from the crew at the top of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	questions that the ramp going away from the boat was also wet, correct? A. Yes. Q. So you understood that your shoes were wet from walking on a wet deck, correct? A. Yeah, definitely when I was walking on the wet surface, it's very likely that my shoes would get wet. Q. Okay. And you knew that that day, correct? THE COURT: I don't think she was sitting there thinking about these things. What you're proving, and you are proving it, is that she admits that the deck was wet, and her shoes were on the deck, so her shoes would have to be wet. MR. RAUWORTH: Okay. BY MR. RAUWORTH: Q. And what did you see that made you think that the gangway was wet, Ms. Jain? A. It was pretty windy and sea water was splashing on. And even at that time we had to retire to the cabin because the water was coming on the gangway. Q. The gangway wasn't on the ship while it was at sea, was it, Ms. Jain?

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	Page 50		Page 52
1	BY MR. RAUWORTH:	1	It happened so fast that I can't even recollect the
2	Q. Okay. Before you stepped down on the gangway, what	2	exact position.
3	is it that made you believe that the gangway was wet?	3	THE COURT: Okay. But it was somewhere on that
4	A. I didn't even have time to think so much because the	4	photograph?
5	moment I stepped out to go out, I slipped.	5	THE WITNESS: It might have been there at the
6	Q. At the time you approached the gangway, you felt	6	end of the gangway. I might have fallen there
7	that you could no reach the handrails. Do I understand	. 7	(indicating).
8	that correctly?	8	BY MR. RAUWORTH:
9	A. As I stepped the gangway the railings would	9	Q. At the bottom, you mean?
10	not even be within my reach I slipped.	10	A. Approximately here.
11	Q. Mr. Coniaris asked you if you attempted to hold onto	11	THE COURT: Do you think that's probably where
12	the rails, and your answer was, "I don't remember";	12	you fell?
13	isn't that true?	13	THE WITNESS: Yeah, I remember that I came from
14	A. Yes, I don't remember. And also, that it didn't	14	up, I came down here (indicating).
15	even come within my reach.	15	THE COURT: All right. Thank you.
16	Q. You don't remember or it didn't come within your	16	Can anybody can either counsel, or both
17	reach?	17	counsel, tell me in feet how far that is?
18	A. It happened so fast that I don't remember clearly.	18	MR. RAUWORTH: Well, it looks to me where she's
19	The whole thing I appened within a fraction of a moment.	19	pointing out looks to be two feet.
20	Q. You've told us that holding onto handrails is	20	THE COURT: No, not what it looks to be. I was
21	important to you, haven't you, Ms. Jain?	21	just wondering if anybody can tell me accurately.
22	A. Yes. One should hold onto the gang rail [sic] while	22	Anyways, okay, I can estimate it as well as you can.
23	getting down, and usually I do hold onto them.	23	BY MR. RAUWORTH;
24	Q. And you didn't ask anyone for any help before you	24	Q. Now, Ms. Jain, you didn't you told us in your
25	stepped onto the gangway, did you?	25	testimony before that you never placed your left foot
	Page 51		Page 53
1	A. I didn't feel that I would need any help from	1	onto the gangway, correct?
2	anybody.	2	A. Could be, because I put one foot on it and the other
3	Q. You were speaking with your son, correct?	3	one must have been in the air.
4	A. My son got down before me, and I tried to get down	4	Q. So your left foot never touched the gangway,
5	after him. And I was not talking to him while he was	5	correct?
6	getting down, I was talking to him while we were on the	6	A. Could be.
7	deck.	. 7	Q. Let's take a look at Exhibit 3. So you're saying
8	Q. Okay. Now, let's take a look at Exhibit 4, if we	8	that your right foot came here, correct?
9	may, and I'll rest this within your reach, Ms. Jain, and	9	A. Yeah, I started from here and I went there.
10	ask you to point out where your body first contacted the	10	Q. You put your right foot here; is that correct?
11	gangway as you fell.	11	A. I don't remember. It could be here, it could be
12	THE COURT: You mean how far down the gangway?	12	there, maybe there.
13	MR, RAUWORTH: To point out where her body first	13	Q. But your right foot was somewhere up at this upper
14	hit the gangway.	14	end, correct?
15	MR. CONIARIS: I would object to that, your	15	A. Yes.
16	Honor. It's not a complete picture.	16	THE COURT: You know, I think it would be
17	THE COURT: You mean where she fell was farther	17	impossible for the ordinary person to remember where
18	down?	18	they put their foot as they were stepping onto a
19	MR. CONIARIS: No.	19	gangplank before an accident occurred when there was no
20	THE COURT: I mean, I thought this was intended	20	reason to think about what foot you're using. So no
21	to show me where she fell.	21	matter what people bring out, I don't believe it's very
22	MR. CONIARIS: That's correct.	22	trustworthy evidence of what actually happened.
23	THE COURT: Can you make a mark where you fell?	23	BY MR. RAUWORTH:
24	THE WITNESS: I might have fallen from there,	24	Q. You didn't take any steps on the gangway, though?
25	and I come and rested here. It happened here below.	. 25	MR. CONIARIS: Objection. It's ambiguous.
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	Page 54		Page 56
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1	THE COURT: No, it isn't ambiguous.	1	on forever trying to get a precise answer.
2	Would you repeat the question?	2	MR. RAUWORTH: No, your Honor. I'm really just
3	MR. RAUV/ORTH: Sure.	: 3	trying to respond to the testimony that she made that she herself said about where she fell.
4	BY MR. RAUWORTH:	. 4	
5	Q. You didn't take any steps on the gangway?	5	THE COURT: That's fair enough.
6	A. You mean I didn't walk on that?	6	BY MR. RAUWORTH:
7	Q. Right. You didn't walk even so far as to touch the	7	Q. Now, when you got to the hospital, your only
8	rails; is that your testimony?	8	injuries were to your ankle and to your elbow, correct?
9	A. Approximately you know, I don't remember, but	9	A. Yes.
10	right at the beginning I couldn't even reach the rails.	10	Q. When you were at the bottom of the gangway you
11	THE COURT: Am I correct in understanding that	11	were I'm sorry. After you fell you were
12	you believe you slipped right at the top of the gangway?	12	light-headed, correct?
13	THE WITNESS: Yeah. As far as I think and I	13	A. Why would I have been light-headed?
14	remember, I might have fallen down right on the	14	Q. I'm simply asking if that I'm asking you to
15	beginning of the gangway.	15	confirm that that's correct.
16	THE COURT: I don't want "I might have." If she	16	A. Nothing happened to my head.
17	doesn't remember, she could say so.	17	Q. You felt light-headed, correct?
18	THE WITNESS: Okay. I do not remember	18	A. No, I didn't feel anything of that type.
19	precisely, but I remember that it was right in the	19	Q. You reported that to the emergency people who came
20	beginning. I didn't walk down the gangway.	20	to help you to go to the hospital, didn't you?
21	THE COUPLT: All right. That's what I want to	21	A. I don't remember what I said, but when somebody
22	know.	22	falls in a faraway, different country, one is likely to
23	BY MR. RAUWORTH:	23	feel nervous and afraid, and that's what I did.
24	Q. Are you say ng, Ms. Jain, that you stepped on the	24	Q. The emergency people took your blood pressure with a
25	gangway at the top and then you slid all the way to the	25	cuff before they moved you to the ambulance, didn't
	Page 55	1	Page 57
1	bottom?	1	they?
2	A. Yes.	2	A. (In English) I don't remember it exactly.
3	Q. I see. Now, your cousin's or your husband's	3	(Through the interpreter) I don't remember exactly,
4	cousin, Kusum Ja n, was in the courtroom earlier. Do	4	but they must have done something on me.
5	you recall that?	5	Q. By the way, when your ankle was not bleeding,
6	A. Yes.	6	correct?
7	Q. You heard her testify, correct?	7	A. No.
8	A. Yes.	8	Q. You're agreeing with me?
9	Q. And when you slipped you must have knocked Kusum	9	A. No. As far as I remember, it was not bleeding.
10	down?	10	Q. Okay. And the emergency people gave you fluid from
11	A. As far as I remember, I didn't knock anybody down.	11	a bag through a needle in your arm, correct?
12	Q. You heard Kusum say that she was on the gangway and	12	A. Perhaps they could have.
13	felt you fall?	13	THE COURT: What's the purpose of this
14	A. I don't know what she might have felt, but as far	14	testimony? Is there any dispute about what happened
15	as it happened so suddenly that I do not remember her	15	medically?
16	position.	16	MR. RAUWORTH: Well, actually, I was just about
17	Q. So you're not remembering able to remember that	17	to suggest that we go to sidebar to deal with the issue
18	you slid all the way down, correct?	18	that Mr. Coniaris dealt with or had a motion about.
19	A. Yeah. I have slipped and landed over there.	19	THE COURT: Okay. Let me see you. I don't
20	THE COUR'T: You know, in a case of this kind	20	quite understand.
21	it's unrealistic, in my opinion, to expect the witnesses	21	MR. RAUWORTH: Sure.
22	to have razor-sharp memories about the details. It	22	(Discussion at sidebar and out of the hearing of
23	wouldn't be credible if they did in the middle of an	23	the jury:)
24	emergency of that kind. And I'm just making that	24	MR. RAUWORTH: Your Honor, in the plaintiff's
25	comment. You can't because I don't think you can go	25	deposition she contradicted a number of the things that

	Page 58	ij	Page 60
1	were recorded by the Gloucester EMTs as going on, and	1	Q. But you had gotten into the routine of 40 minutes by
2	I'm trying to get a record as to what she's saying today	2	the time we had the deposition, correct?
3	about that because I think there's some pretty	3	A. Now it's up to that time. It has not improved since
4	significant inconsistencies. But the reason we're at	4	then.
5	sidebar on Mr. Conjaris's motion is one of the EMTs	5	Q. Okay. And you walk without assistance, correct?
6	noted that she lost control of her bladder, and she is	6	A. Yes.
7	absolutely insisten that that didn't happen. Now, I'm	, 7	Q. Before you came to the United States and had the
8	not interested in embarrassing her at all, but this is	8	whale watch trip, you didn't drive a car, correct?
9	an element that someone is not likely to forget about.	9	THE COURT: I'm sorry. I didn't hear that.
10	THE COURT: And am I to understand that your	10	BY MR. RAUWORTH:
11	purpose in going ir to this is to show that her memory	11	Q. Before you came to the United States and had the
12	wasn't very good or what?	12	whale watch trip, you did not drive a car, correct?
13	MR. RAUWORTH: Yes. Yes.	13	THE COURT: Okay.
14	THE COURT: Okay.	14	THE WITNESS: Yes.
15	MR. RAUWORTH: And, your Honor, if I may, I'm	15	BY MR. RAUWORTH:
16	not sure of the best way to handle this. We clearly	16	Q. And you got around because your family had a driver,
17	have no need to have discussion about incontinence of	17	correct?
18	urine take place in open court. If we can stipulate to	18	A. Yeah, we have a driver. And the driver leaves
19	it, that she denies being incontinent actually, I can	19	early, so my husband does the drives.
20	do that with the deposition and we don't need to	20	Q. And you use the driver to get you to places you
21	THE COURT: Will you stipulate?	21	needed to go around the city, correct?
22	MR. CONIAFIS: I'll stipulate to that, yeah.	22	A. Yes, the driver did.
23	MR. RAUWORTH: When she was asked, "At some time	23	Q. And how much was the driver paid?
24	did you have some difficulty of controlling your urine	24	THE COURT: What's the difference what the
25	while the paramedics were there to help you, correct?	25	driver was paid?
	Page 59		Page 61
1	"Answer: No, no, not at all. No. No. No."	1	MR. RAUWORTH: With reference to other elements
2	So I think that's about it.	2	of mitigation, Judge, a comparison.
3	THE COURT: Let me see that. So will you	3	BY MR. RAUWORTH:
4	stipulate that	4	Q. I'm sorry. How much is the driver paid?
5	MR. CONIARIS: Yeah, I'll stipulate.		
6		5	A. The driver, approximately we pay him
_	THE COUR Γ: Okay. Thank you.	6	A. The driver, approximately we pay him approximately 6 to 7,000 rupees per month.
7	THE COURT: Okay. Thank you. (In open court:)	6	
	•	6	approximately 6 to 7,000 rupees per month.
7 8 9	(In open court:) BY MR. RAUW()RTH: Q. Now, Ms. Jain, let me ask you about some things that	6 7 8 9	approximately 6 to 7,000 rupees per month. THE COURT: How much is that in dollars, if you know? THE WITNESS: One dollar is, like, 40 rupees.
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	(In open court:) BY MR. RAUWORTH: Q. Now, Ms. Jain, let me ask you about some things that relate to the time — I'm sorry. Let me go back and clarify one thing. Your memory is that there was no rain on the day of this whale watch rip, correct? A. No, there was no rain. Q. Now, when you came to the deposition at my office you were already considerably improved from the time that you were previously in the United States, correct? A. Yeah. The biggest improvement was that I could walk without a walker. Q. And, in fact, you were already back to doing your morning walking from 8 a.m. to 8:30 a.m. each morning, or six mornings a week, correct?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	approximately 6 to 7,000 rupees per month. THE COURT: How much is that in dollars, if you know? THE WITNESS: One dollar is, like, 40 rupees. THE COURT: And how many rupees was it? THE WITNESS: 6,000 rupees. THE COURT: Thank you. BY MR. RAUWORTH: Q. And after the whale watch trip, when you came back to India you hired a man to help with testing of the enzymes at the client location, correct? A. Yes, we did, but he was not up to the mark and he was also not sincere, so we were obliged to remove him. Q. And you paid him 10,000 rupees a month, correct? A. Yes, sir. Q. Okay. After he stopped working for you, what did you do to locate someone to accompany your husband for

	Page 62	. !	Page 64
	•	:	
1	so it wasn't adequate to have him, so we were obliged to	1	(There is a pause.)
2	remove him also.	2	THE WITNESS: I don't understand. What is this?
3	Q. How were those people paid, by check?	3	THE COURT: These are perhaps if you asked a
4	A. I don't remember exactly because my husband works on	4	question, we could move along.
5	the financial side of the business, but it could be	5	MR. RAUWORTH: Sure.
6	through a check of otherwise. I don't know.	. 6	BY MR. RAUWORTH:
7	MR. RAUW ORTH: Your Honor, at this time I would	; 7	Q. Let me ask you to turn to the very last page of the
8	like to introduce Defendant's Exhibit 6, which is the	8	document. The very last page. Do you see your
9	plaintiff's responses to the defendant's	9	signature there?
10	interrogatories, for the limited purpose only of	10	THE COURT: Oh, come on. What is this? Is this
11	impeachment. They were previously identified in	11	something she signed?
12	testimony of the plaintiff in her deposition, and I	12	MR. RAUWORTH: Yes, it is, your Honor.
13	think they're agreed to.	13	THE COURT: Okay. Why don't you just ask her if
14	THE COURC: Okay.	14	she signed it.
15	THE CLERK: That will be Exhibit No. 6, marked	15	MR. RAUWORTH: Sure.
16	and entered.	16	BY MR. RAUWORTH:
17	(Exhibit No. 6 was received into evidence.)	17	Q. You signed that, didn't you, Ms. Jain?
18	THE COUR:: What did you say it was?	18	A. Yes.
19	MR. RAUW/DRTH: I'm sorry. It's marked as	19	Q. So the material on page 6 and 7 were your answers
20	Defendant's 6.	20	about the finances of the business, correct?
21	THE COURC: Yes.	21	THE COURT: I'm sure you could get a stipulation
22	MR. RAUW ORTH: And it is plaintiff's responses	.22	on this. I mean, I don't think it's necessary to waste
23	to defendant's first interrogatories.	23	time like this.
24	THE COURT: Okay.	24	MR. RAUWORTH: I think the next question may
25	BY MR. RAUWCRTH:	25	help clarify the point.
	Page 63		Page 65
1	Q. By the way, the measurements that the young men	1	THE WITNESS: Is it my deposition?
2	strike that.	2	BY MR. RAUWORTH:
3	The young men that we were just talking about that	3	Q. No, it's a paper that you signed, Ms. Jain. You
4	you hired, they assisted in testing, correct?	4	recognize your signature, correct?
5	A. Yeah. Not so much for testing, but we make him	5	A. Yes.
6	stand there so he would watch and see.	6	Q. That's information that
7	Q. So he would	7	A. The information regarding the finances might have
8	7	8	
9	MR. RAUWORTH: I'm sorry? THE INTEEPRETER: Watch and see.		been given by my husband, and I have signed on it.
10		9	Q. Correct.
11	BY MR. RAUW ORTH: Q. Watch and see what?	10	THE COURT: But you have no reason to believe
12	•	11	they're not correct, do you?
13	A. The clothes that were being processed.	12	THE COURT: Observe
14	Q. All right. Now, you indicated that your husband	13	THE COURT: Okay.
15	takes care of the financial aspects of the business? A. Yes.	14	BY MR. RAUWORTH:
16		15	Q. You didn't participate in calculating the amounts of
17	Q. Let me ask you to take a look, if you would, please,	16	the loss of your business, correct?
1	at Defendant's Exhibit 6. On page 6, and at the bottom	17	A. I have a clear idea about how much loss or gain we
110	of the nego starting with the answer to I		are making, I have a general idea, but I do not do that
18	of the page, starting with the answer to Interrogatory	18	
19	No. 8, and then going on to page 7 before Interrogatory	19	type of calculation, that is done by my husband.
19 20	No. 8, and then going on to page 7 before Interrogatory No. 9, I'd ask you to take a look at that.	19 20	type of calculation, that is done by my husband. Q. And who prepares the tax papers for the business?
19 20 21	No. 8, and then going on to page 7 before Interrogatory No. 9, I'd ask you to take a look at that. A. Which one do you want me to look at, sir?	19 20 21	type of calculation, that is done by my husband. Q. And who prepares the tax papers for the business? A. We have our CA.
19 20 21 22	No. 8, and then going on to page 7 before Interrogatory No. 9, I'd ask you to take a look at that. A. Which one do you want me to look at, sir? Q. At the bottom of page 6	19 20 21 22	type of calculation, that is done by my husband. Q. And who prepares the tax papers for the business? A. We have our CA. Q. I'm sorry?
19 20 21 22 23	No. 8, and then going on to page 7 before Interrogatory No. 9, I'd ask you to take a look at that. A. Which one do you want me to look at, sir? Q. At the bottom of page 6 THE COURT: Number 8 and going to Number 9.	19 20 21 22 23	type of calculation, that is done by my husband. Q. And who prepares the tax papers for the business? A. We have our CA. Q. I'm sorry? A. Our CA.
19 20 21 22	No. 8, and then going on to page 7 before Interrogatory No. 9, I'd ask you to take a look at that. A. Which one do you want me to look at, sir? Q. At the bottom of page 6	19 20 21 22	type of calculation, that is done by my husband. Q. And who prepares the tax papers for the business? A. We have our CA. Q. I'm sorry?

	Page 66	i	Page 68
1	Q. I see. So the business makes filings with taxing	1	answer. This material on the top of page 7 is basically
2	authorities, corrept?	2	all we got.
3	A. Yes.	3	THE COURT: I understand what your point is.
4	Q. Does the business prepare financial statements?	4	MR. RAUWORTH: And as a result
5	THE INTERPRETER: Sorry?	5	THE COURT: Well, the question, then, is whether
6	BY MR. RAUWORTH:	6	their proof is sufficient, and you've raised a serious
7	Q. Does the business prepare financial statements?	7	question, but I don't think
8	A. Yes, it's prepared.	8	I understand, and the witness can tell me if I'm
9	Q. And we don't have any of those, do we?	9	not correct, that you don't pretend that you prepared
10	A. I don't know You might have that.	10	the statements about the financial condition of your
11	Q. You can't tell us the actual profit or loss for the	11	business or prepared the tax returns; is that right?
12	business year of 2005 or 2006, can you?	12	THE WITNESS: I never prepared them.
13	A. Yeah, that must be, because my business papers are	13	THE COURT: So what is the source of your
1.4	there. And since I'm under oath, I would definitely	14	information that makes you say that you've suffered
15	tell the truth.	15	great losses?
16		16	THE WITNESS: I have that much knowledge that I
17	Q. I beg your pardon?	17	know that we are losing in the business.
18	MR. RAUWORTH: I'm sorry. Mr. Interpreter, I	18	THE COURT: Where does your knowledge come from?
19	didn't hear what you said.	19	THE WITNESS: Yeah, because we did not have
20	THE INTERPRETER: No, that's what she said.	20	·
ŀ	MR. RAUWORTH: I didn't hear what you said.	2	recovery of the sales process. And we had lost contacts
21	THE INTERPRETER: She said, "Yes, my business	21	and I could not try to make my sales. So from that I
22	papers should be here. And since I'm under oath, I will	22	can understand that we're losing the business.
23	definitely be speaking the truth."	23	THE COURT: I'm not asking you to tell me what
24	BY MR. RAUWORTH:	24	you think caused your losses, I'm asking you to tell me
25	Q. But you can't tell us the profit or loss for the	25	how you found out. What figures do you have that you
1		I .	
	Page 67		Page 69
1	business in the fiscal year of 2005-2006, can you?	1	know; what documents do you look at?
1 2	•	1 2	
	business in the fiscal year of 2005-2006, can you?		know; what documents do you look at?
2	business in the fiscal year of 2005-2006, can you? A. I haven't done this.	2	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the
2	business in the fiscal year of 2005-2006, can you? A. I haven't done this. Q. The business had results in the financial year after	2	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the papers.
2 3 4	business in the fiscal year of 2005-2006, can you? A. I haven't done this. Q. The business had results in the financial year after you had your accident, correct?	2 3 4	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the papers. MR. CONIARIS: I'm sorry. Can you talk to the
2 3 4 5	business in the fiscal year of 2005-2006, can you? A. I haven't done this. Q. The business had results in the financial year after you had your accident, correct? A. Yes.	2 3 4 5	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the papers. MR. CONIARIS: I'm sorry. Can you talk to the judge if you have something to say?
2 3 4 5 6	business in the fiscal year of 2005-2006, can you? A. I haven't done this. Q. The business had results in the financial year after you had your accident, correct? A. Yes. Q. And the business submitted tax materials to the	2 3 4 5 6	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the papers. MR. CONIARIS: I'm sorry. Can you talk to the judge if you have something to say? THE WITNESS: Sir, could you would you please
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2 3 4 5 6 7 8	business in the fiscal year of 2005-2006, can you? A. I haven't done this. Q. The business had results in the financial year after you had your accident, correct? A. Yes. Q. And the business submitted tax materials to the taxing authorities, didn't it? A. Yeah, they have done it, but my business has been	2 3 4 5 6 7 8	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the papers. MR. CONIARIS: I'm sorry. Can you talk to the judge if you have something to say? THE WITNESS: Sir, could you would you please like to ask him if our papers were submitted to him or not? I'm not aware.
2 3 4 5 6 7 8	business in the fiscal year of 2005-2006, can you? A. I haven't done this. Q. The business had results in the financial year after you had your accident, correct? A. Yes. Q. And the business submitted tax materials to the taxing authorities didn't it? A. Yeah, they have done it, but my business has been slowly, slowly going to loss.	2 3 4 5 6 7 8	know; what documents do you look at? THE WITNESS: (In English) Jeffrey, you have the papers. MR. CONIARIS: I'm sorry. Can you talk to the judge if you have something to say? THE WITNESS: Sir, could you would you please like to ask him if our papers were submitted to him or not? I'm not aware. THE COURT: Would you repeat that?
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	Page 70		Page 72
1	cross-examine on them.	1	BY MR. RAUWORTH:
2	MR. RAUWORTH: Well, your Honor, I would move	2	Q. On Line No. 4, and the copy we have is a little
3	that they not be permitted because they've never been	3	faint, it says, "Proposer's actual occupation
4	disclosed.	4	(specify)," correct? That's what it says, correct?
5	THE COUR I: Yeah. I'm afraid I can't. I'll	5	A. Yes.
6	have to let it rest the way it is.	6	Q. And this was a paper that you filled out before you
7	MR. RAUWORTH: And, your Honor, for the record,	7	had your accident, correct?
8	I would like to put on the record a motion to strike	8	A. Yes.
9	this financial test mony because	9	Q. And on the line where it says, "Proposer's actual
10	THE COURT: No, I don't think I'll strike it, I	10	occupation," you said you were a housewife, correct?
11	just think it's very, very weak.	11	A. Yeah, I am housewife, because the home come first.
12	MR. RAUWORTH: Thank you.	12	We maintain our home first and then look after the
13	BY MR. RAUW()RTH:	13	business.
14	Q. Let me hand you, Ms. Jain, a copy of I'm sorry	14	Q. Uh-huh. You didn't say "housewife and
15	the original of what was Exhibit 3 in your deposition	15	businesswoman," did you?
16	and is marked here at trial as Defendant's Exhibit 7.	16	THE COURT: It's a different culture, you know.
17	And this was something that was provided to us as an	17	THE WITNESS: Yeah. I mean, we refer ourselves
18	application for travel insurance before this trip. Let	18	as housewife first, and I haven't mentioned that I'm a
19	me ask you to put these other things to one side, and	19	businesswoman.
20	take a moment to familiarize yourself with Exhibit 7.	20	BY MR. RAUWORTH:
21	(Pause.)	21	Q. Uh-huh. And it's important in India when making
22	MR. RAUWORTH: I would offer this to the Court	22	application for insurance to tell the truth, isn't it?
23	in case you would like to have a look at the document as	23	A. Yeah. I mean, whatever I fill in is all true. And
24	we review it.	24	I am also housewife, and along with that, I do look
25	THE COURT: Yes.	25	after my business.
1 1,000	Page 71		Page 73
1	BY MR. RAUWORTH:	: 1	MR. RAUWORTH: That's all the questions I have
2	Q. You've had a chance to look that over, Ms. Jain?	2	at this time, your Honor.
3	A. Yes.	. -	THE COURT: Thank you.
4	Q. All right. Ard at the bottom is your signature,	4	I'll return this to you, George.
5	correct?	5	MR. CONIARIS: 1 don't have any questions, your
6	A. Yes.	6	Honor.
7	Q. And that reflects the date of the 29th day in the	7	THE COURT: Very good. Thank you, ma'am.
8	seventh month of 2004?	8	You're excused.
9	A. Yes.	9	(The witness is excused.)
10	Q. And this was an application for travel insurance for	10	* * *
11	the trip that brought you to the United States when you	11	CERTIFICATE
12	took the whale watch voyage, correct?	12	
13	A. Yes, sir.	13	I, Marcia G. Patrisso, RPR, CRR, Official
14	Q. Now, it's a little faint, but up at the top left	14	Reporter of the United States District Court, do hereby
15	there, there are some numbered lines. Do you see those?	15	certify that the foregoing transcript constitutes, to
16	THE COURT: Is this Exhibit 3?	16	the best of my skill and ability, a true and accurate
17	MR. RAUWORTH: I beg your pardon, your Honor,	17	transcription of my stenotype notes taken in the matter
18	that's Exhibit 7 in the trial. I didn't get the sticker	18	of Civil Action No. 05-11267-MEL, Madhu Jain v. A Cape
19	on. I'll mark it accordingly.	19	Ann Whale Watch, Inc.
20	THE COUR I: Still, I can't understand what	20	
21	you're referring to.	21	/a/ Maraia G. Patrigga
22	MR. RAUWORTH: Sure. What I'm alerting the	22	/s/ Marcia G. Patrisso
23	witness to is these lines. I just want to point out	23	MARCIA G. PATRISSO, RPR, CRR Official Court Reporter
24	THE COURT: Okay.	24	Official Court Reporter
25	MR. RAUWORTH: have her select one of them.	25	
L	TAIN, IN TO IT OR THE HAVE HEL SCIENT OHE OF THEM,	120	

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11267-MEL

MADHU JAIN,

TRANSCRIPT OF TRIAL PROCEEDINGS
TESTIMONY OF JOHN CULVER

Plaintiff,

(Excerpt)

V.

A CAPE ANN WHALE WATCH,
INC.,

Defendant.

BEFORE: The Honorable Morris E. Lasker, Senior United States District Judge

John J. Moakley United States Courthouse
Courtroom No. 20
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, June 12, 2007

Marcia G. Patrisso, RPR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3507
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

		Page 2	Page 4
1	APPEARANCES:	1	MR. CONIARIS: Your Honor, for my next witness,
2	I AW OFFICE OF REEDRING CONTAINS	2	I'd like to call John Culver.
3	LAW OFFICE OF JEFFREY C. CONIARIS By: Jeffrey C. Coniaris, Esq.	3	JOHN CULVER, sworn
	84 State Street, 6th Floor	4	THE CLERK: Please take the stand, have a seat.
4	Boston, Massachusetts 02109	5	Give the Court your full name, spelling your last.
	On behalf of the Plaintiff	6	THE WITNESS: Thank you. My name is John
5	CETRUI O A CLADONELLA	7	Culver, C-U-L-V-E-R.
6	CETRULO & CAPONE LLP By: Michael J. Rauworth, Esq.	8	DIRECT EXAMINATION
ľ	Two Seaport Lane, 10th Floor	9	BY MR. CONIARIS:
7	Boston, Massachusetts 02210	10	Q. Where do you presently reside, Mr. Culver?
	On behalf of the Defendant	11	A. Seabrook, New Hampshire.
8		12	Q. And who do you reside with?
9		13	A. My wife.
11		14	•
12			Q. How long have you been married?
13		15	A. Fifty-eight years? Fifty-eight years.
14		16	Q. I don't want to get you in any trouble today, sir.
15		17	And are you presently employed?
16 17		18	A. Well, I'm in consulting.
18		19	Q. What kind of consulting do you do?
19		20	A. Marine engineering and quality engineering
20		21	consulting.
21		22	 Q. And can you describe briefly your educational
22 23		23	background?
24		24	A. I graduated from the Massachusetts Maritime Academy
25		, 25	in 1947; then I attended George Washington University in
		Page 3	Page 5
1	INDEX	1	Washington, D.C., and American University in Washington,
2		2	D.C., to obtain my degree, a bachelor of science in
	Direct Cross Redirect Recross	3	Marine Engineering.
3	HIMITOONS FOLDING	4	Q. Okay. Have you taken
4	WITNESSES FOR THE PLAINTIFF:	5	A. Then I've had several courses in the Navy:
5	LANTIFF.		Industrial College of the Armed Forces, Naval War
	JOHN CULVER	· 6	· ·
6			College of Newport, several
	By Mr. Coniaris 4 66	: 8	THE COURT: Is this information available in
7 8	By Mr. Rauworth 25	9	writing?
9		10	MR. CONIARIS: Yes. We have his resume, your
10	EXHIBITS	11	Honor.
11	Exhibit No. Description In Evd.	12	THE COURT: Good. Then I won't have to take
12	00 Pl	13	notes on it.
12	20 Photograph 29	14	Go ahead, sir.
13	21 Photograph 60	15	THE WITNESS: Thank you.
14	I notograph	16	BY MR. CONIARIS:
15		17	Q. Am I cutting you off?
16		18	A. No. I could go on, but that's enough.
17		19	THE COURT: We want to know all of your
18 19		20	background.
20		21	THE WITNESS: Yes, sir.
21		22	BY MR. CONIARIS:
22		23	Q. Can you tell us places where you've taken where
23		24	you've either taken courses or been instructed?
24 25		25	A. Oh, sure. I took courses at the Naval War College
23			A. On, sure. I took courses at the reavail war conege

	Page 6		Page 8
1	in Newport, Rhod: Island; the Industrial College of the	1	A. I've had depositions, yes.
2	Armed Forces in Washington, D.C.; Allison Division of	: 2	Q. How many would you estimate that you've had?
3	General Motors Gas Turbine school; and then after I	3	A. Two depositions.
4	retired from the Navy, I taught	4	Q. And have you testified in any trials?
5	THE COURT: Excuse me. How long were you in the	5	A. Not really. I've been involved in several
6	Navy?	6	engineering
7	THE WITNESS: Thirty-eight years, sir.	7	Q. Would you like a glass of water, sir?
8	THE COURT: And what were what was your line	8	A. Maybe that would be a good idea.
9	of work?	9	THE CLERK: Right there.
10	THE WITNESS: I was an engineering duty officer.	10	THE WITNESS: It's right here, I think.
		11	THE CLERK: Yes. All set.
11	Well, first I was a line officer. When I first went in		
12	the Navy I was a line officer, and I was on several	12	THE COURT: Thank you.
13	ships as a line officer in the Korean fracas.	13	THE WITNESS: I've got a frog in my throat.
14	THE COUR'S: And how long were you on engineering	114	Where were we?
15	duty in the Navy?	15	BY MR. CONIARIS:
16	THE WITNESS: Engineering duty in the Navy, I	16	Q. I think we were at the shipyard. In terms of
17	changed my designator in 1957 to engineering duty.	17	shipbuilding, what were your duties?
18	THE COURT: And how long did you stay?	18	A. Well, my duties varied, but I was first the head of
19	THE WITNESS: Until I was retired in 1985.	19	the Piping Design Group for the Navy at the Quincy yard,
20	THE COURT: So it was 28 years?	20	but when Bethlehem Steel had the yard. And that's when
21	THE WITNESS: Yes, sir.	21	we built the Long Beach, it's a nuclear cruiser and
22	THE COUR'Γ: All right. Thank you.	22	nuclear destroyer; Bainbridge; destroyers like McDonough
23	BY MR. CONIARIS:	23	and Mullinex; submarines: Sunfish and Whale.
24	Q. Can you you served on ships?	24	And at that time I was in the piping design
25	A. Oh, yes. Twelve ships I served on. And I was in	25	business, the design group, the Navy office at Quincy.
,	Page 7	:	Page 9
1	the shipbuilding and ship repair business. And there	1	And when the General Dynamics Shipyard assumed the yard
2	were a number of ships that we built. I was at the Navy	2	or bought the yard or whatever they did, then they got
3	office down in Quincy, at Bethlehem Steel Shipyard; and	3	involved in building many more ships. At that time I
4	then I was there a so when General Dynamics ran the	4	was pulled in as the head of the quality assurance
5	shipyard, and we're built I don't know how many ships.	5	department and responsible for inspection/design changes
	I could probably give you an estimate. Probably around	6	for all of the things that go on in building a ship.
6		7	That was a very challenging job, by the way.
7	25 ships or sometting like that. And I was involved in		
8	the engineering part of piping design and for a	8	The responsibilities were many. I had responsibility
9	while, and then I become the quality assurance manager	9	for the process control section, responsibility for the
10	on the waterfront trying to put the ships together.	10	design section, responsibility for the inspection
11	THE COUR Γ: Where was that?	11	department at that time. So they built two twin
12	THE WITNESS: Say it again, sir?	12	ammunition ships; southern replenishment oilers for the
13	THE COURT: I'm sorry?	: 13	Navy; four landing ship docks for the Navy; two
14	THE WITNESS: What did you say?	14	submarine tenders for the Navy. Do you want the names
15	THE COURΤ: Where were you quality assurance	15	of all these or is that
16	manager?	16	Q. No, we have the resume.
17	THE WITNESS: At the General Dynamics well, I	17	Have you authored any books or articles?
18	worked for the U.S. Navy Department.	18	A. Yes, I've authored books.
19	THE COURT: Yes. But what location?	19	Q. What books?
20	THE WITNESS: General Dynamics Shipyard, Quincy,	20	A. I authored a book "Ships of the U.S. Merchant Fleet"
21	Massachusetts.	21	back in 1969, '70. It still sells. And I also authored
22	THE COURT: All right. Thank you.	22	a book on electric drive propulsion for ships, which was
23	BY MR. CONIARIS:	23	recently published. And I've written numerous technical
			* *
24	Q. Have you testified at a deposition within the past	24	papers for the American Society of Naval Engineers. And

	Page 10	:	Page 12
1	think most of those are in my resume, the papers that	1	THE COURT: Were you a naval officer or were you
2	I've written.	2	a civilian?
3	Q. Can you brief y go over them?	3	THE WITNESS: I was a naval officer. It was
4	A. Well, I wrote one when I was at the Bureau of Ships	4	split: Some of the jobs I was a naval officer and some
5	years ago, I wrote the paper "The Series-Parallel	5	I was a civilian.
6	Turbine" on the destroyers and aircraft carriers that	. 6	THE COURT: What was the highest rank you
7	they were building at the time, the Saratoga and the	: 7	achieved?
8	Ranger and the Constellation, some of those; and the	8	THE WITNESS: I achieved Captain 06.
9	destroyers that we built at Quincy I wasn't at Quincy	9	THE COURT: 06?
10	at the time, I was in Washington, then, when I wrote	10	THE WITNESS: Yes.
11	that paper.	11	THE COURT: What do you mean by "06"?
12	Oh, I don't kno w. I can't remember all the other	12	THE WITNESS: That's the pay grade, 06. A
13	ones that I've written, but there's been a few more that	13	captain in the Army, that's not the same as a captain in
14	I've written. I wrote the paper after the General	14	the Navy.
15	Dynamics business, General Dynamics closed the shop down	15	THE COURT: Oh, I know. I was a captain in the
16	there in Quincy	16	Army. I didn't have any ships under me.
17	THE COURT: When did they do that?	17	THE WITNESS: No, no ships under you? Okay.
18	THE WITNESS: Oh, gosh. That was in 1970	18	And let's see. Well, I the Korean Service
19	THE COURT: Long ago? Okay.	19	Medal with three stars and the United Nations Service
20	THE WITNESS: Yeah. And I went as the quality	20	Medal. I was in Korean action. I was a line officer,
21	assurance manager for the supervisor of shipbuilding,	21	then, on board ships.
22	U.S. Navy in Boston. Here in Boston. And we were	22	BY MR. CONIARIS:
23	the office was at 656 Summer Street over here. And I	23	Q. What did you do there?
24	was a quality assurance chief for that operation. We	124	A. Well, I first was on the USS Gull, the AMS-16, which
25	had 14 shipyards from Portland, Maine, to Newport, Rhode	25	is a minesweeper, north of the 38th parallel in areas
	Page 11		Page 13
1	Island. There were several of them right here in	1	like Hung Nam and Wanson and San Soo Gap and the West
2	Boston, which they're not here anymore. They kind of	2	Coast of Chinnapo sweeping mines: contact mines,
3	dried up and went home, I guess. And that was ship	3	acoustic mines and magnetic minus. I was on that ship
4	repair work where ships would come in	4	for I was on that ship as chief engineer, by the way,
5	availabilities an I we would set up the availability	5	but I also had to stand bridge watches on that ship.
6	with the contractor.	6	And the captain of the ship, oh, about two months or
7	I didn't write the contracts but I was responsible	. 7	so after I was on there, he his lung collapsed, and I
8	for making sure that the people that were doing the work	8	was the next senior officer onboard the ship, so I was
9	did it according in accordance with Navy	9	designated as a commanding officer of the ship.
10	specifications and all that kind of thing. So that	10	After that tour I went on back to San Diego to
11	worked out the pretty well. It was a pretty good job	11	pick up the destroyer, the USS Harry E. Hubbard DD-748,
12	and a very active job. And I went on many ships during	12	and we again proceeded back to WestPac, which it was
13	that time and went up many gangplanks.	13	called in those days, Western Pacific area. I was a
14	BY MR. CONIARIS:	14	main propulsion assistant on that ship. And we had
15	Q. Let me ask you: Have you ever got any commendations	15	diamond plate floor plates in the engine room.
16	for anything that you've ever done, or any medals?	16	On that ship we served Task Force 77. We left San
17	A. Oh, yes. Yes.	17	Diego with three other destroyers and two aircraft
18	Q. Can you explain?	18	carriers and went to Casper 77 off the East Coast of
19	A. I received the Navy Meritorious Service Medal for	19	Korea and we served as the screening ship and also as a
20	setting up the quality assurance program, the Naval Sea	20	shore bombardment ship on the East Coast of Korea.
21	Systems Command in 1982 '82. Yeah, in '82. I	21	THE COURT: This is very interesting, but should
22	received the Navy Commendation Medal for setting up the	22	we get
	repair facility in Newport, Rhode Island, with the	23	MR. CONIARIS: Yes. I'm sorry, your Honor.
23			
23 24 25	Repair Barge 26 where we fixed ships for the Navy down there in Newport, Rhode Island.	24	Absolutely. BY MR. CONIARIS:

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	Page 14		Page 16
1	Q. Do you have any licenses?	1	THE COURT: What is the question?
2	A. Oh, yes, I dc. That's what I kind of thought the	2	MR. CONIARIS: I was going to ask him if there
3	questions you were going to ask me would be, rather than	3	is a transition plate there.
4	my seagoing career. But anyway, yes, I have a chief	4	THE WITNESS: No, there isn't.
5	engineer's license, the United States Merchant Marine,	5	MR. RAUWORTH: Objection. I'd suggest the
6	issued by the Un ted States Coast Guard; I have a	6	photograph isn't able to depict that, and the photograph
7	professional engineer's license, P.E., they call it, in	7	is unclear.
8	the state of Mass achusetts; a professional engineer's	. 8	THE COURT: That's for cross-examination.
9	license, P.E., in the state of California. The	9	What do you call it, the transition?
10	Massachusetts license is mechanical engineering and the	10	THE WITNESS: It's the transition plate.
11	California license is quality engineering. I did have	11	There's a plate that goes from the deck of the ship to
12	one in New Hampshire but I let that one expire.	12	the top of the gangplank.
13	Q. Okay. Thank you, sir. Let me run way back here.	:13	THE COURT: Okay.
14	I'm going to s now you a blown-up photograph marked	14	THE WITNESS: If it wasn't there, there's a
15	Plaintiff's Exhibi: No. 3. Can you tell me what that	15	step
16	depicts?	16	THE COURT: What you're saying at the moment:
17	A. That's an eight-foot scaffolding used in the	17	You don't see one, right?
18	horizontal plane of buildings and things like that.	18	THE WITNESS: I don't see one in that picture.
19	Q. Okay. And its present use here is as a gangway?	19	THE COURT: Okay.
20	A. No, it's not. It's scaffolding.	20	THE WITNESS: What else did you say? Do you
21	Q. This is not a gangway?	21	want me to saying anything else about that?
22	A. No. A gangway is the place in the ship where the	22	BY MR. CONIARIS:
23	gangplank is put. On the left top there, there's a	23	
24	T T	24	Q. Let me grab my notes, sir. I'm sorry, I didn't
l .	break in the railir g. That's the gangway. The	!	bring them up with me.
25	gangplank is the object that goes from the ship to the	25	Okay. You mentioned a handrail?
ĺ	Page 15	:	Page 17
1	shore. In this case it was a barge, I think.	; 1	A. It's not a continuous one, either. It should wrap
2	Q. And you're familiar with gangways and gangplanks?	2	around on the top so people can grab ahold of it so they
3	A. I am definitely familiar with gangways and	3	could get onto the gangplank.
4	gangplanks.	4	Q. And I have a couple of photographs with me that I'm
5	Q. Pointing up here to these objects here, can you tell	5	going to show you, if that's okay. And I want you to
6	me what those are?	6	tell me what these depict. I have them someplace.
7	A. Well, they're clamps that hold the vertical	7	(Pause.)
8	stanchions and the horizontal stanchions in a	. 8	MR. CONIARIS: Excuse me.
9	specification for a gangplank that's unsatisfactory.	9	MR. RAUWORTH: Your Honor, I'm going to move to
10	It's supposed to be straight with no interruptions at	10	strike that last comment about wrapping around the end.
11	all for the people that are using those handrails.	.11	There's no disclosure to that effect coming from this
12	Q. Okay. Can you tell us anything else about this in	12	witness.
13	terms of, for example, right here I notice can you	13	THE WITNESS: What?
14	tell me what is going on right there?	14	THE COURT: I'm afraid I don't understand the
15	A. A transition plate.	15	point.
16	MR. RAUWORTH: May I see it, please?	16	MR. RAUWORTH: Well, the plaintiff was required
17	THE COURT: You're pointing to the lower left	17	back in March of 2006 to make a disclosure of what the
18	part of the photograph?	18	expert was going to testify about.
19	THE WITNESS: Is that the transition plate	19	THE COURT: All right. For the record, you're
20	you're talking about?	20	entitled to make that objection. I can't rule on it
21	MR. RAUW ORTH: Can I see where counsel is	21	because I don't know what the disclosure was. I'd have
1	MIN, NAU WORTH. Call I see Where counsel is	i i	
	nainting?		
22	pointing?	22	to compare it at a later date.
23	MR. CONIARIS: Right here.	23	MR. RAUWORTH: Understood.
1	, -	i	-

	Page 18		Page 20
1	about this picture?	1	Q. Okay.
2	MR. RAUWORTH: Objection. That's open-ended.	2	THE COURT: When you say it's not used, would
3	THE COURT: Anything else? It's blue.	3	you go so far as to say you never observed such a
4	MR. CONIARIS: Okay. Sorry, your Honor.	4	material used let me start again that you never
5	BY MR. CONIARIS:	5	observed the diamond plate used on a gangplank?
6	Q. Captain Culver, I notice that this is this object	6	THE WITNESS: That's correct.
7	here is at an angle?	7	THE COURT: Okay.
8	A. Yup.	8	THE WITNESS: In my experience.
9	Q. Can you approximate that angle?	9	BY MR. CONIARIS:
10	A. Well, I'd say it's probably 10 to 15 degrees, by the	10	Q. Okay. You've had experience with diamond plate in
11	looks. That's the standard for gangplanks, is 8	11	engine rooms?
12	degrees. That looks like that looks like more than 8	12	A. Right. They're used throughout the second level in
13	degrees. And, also, there's a nameplate on there that	13	an engine room where the forward platform is.
14	does not have the allowable angle, which is required on	14	Q. Does diamond plate behave any differently in terms
15	a gangplank. The nameplate is supposed to have the	15	of traction if it's wet or dry?
16	maximum angle that it's supposed to be used for or	16	A. Absolutely.
17	at.	17	MR. RAUWORTH: Objection. Competence and lack
18	THE COURT: Are you as a landlubber, I have	18	of any disclosure. There's no suggestion that this
19	to ask you in landlubber terms. Are you saying this is	19	individual has got any ability to
20	steeper or not as steep as it should have been?	20	THE COURT: All right. Decision is reserved.
21	THE WITNESS: Steeper. Steeper than it should	21	Would you answer the question?
22	have been.	22	THE WITNESS: What was the question?
23	MR. CONIARIS: Thank you.	23	BY MR. CONIARIS:
24	BY MR. CONIARIS:	24	Q. When it gets wet, is there any change in traction?
25	Q. Are you familiar with diamond plate yes?	25	A. Oh, absolutely. I mean, that's pretty common sense.
			The state of the s
1	Page 19	:	Page 21
1	A I've stood on many	1	O Okay Pafarring to this avhibit hara Contain
1 2	A. I've stood on many.	1	Q. Okay. Referring to this exhibit here, Captain
2	Q. Okay.	2	Culver, which is marked Exhibit 4, can you tell me what
2 3	Q. Okay.A. They use basically, they're used in engine rooms,	2 3	Culver, which is marked Exhibit 4, can you tell me what that depicts?
2 3 4	Q. Okay. A. They use basically, they're used in engine rooms, in the marine applications, anyway. And they're used as	2 3 4	Culver, which is marked Exhibit 4, can you tell me what that depicts? A. That shows the gangway, which is the area where the
2 3 4 5	Q. Okay. A. They use basically, they're used in engine rooms, in the marine applications, anyway. And they're used as a if it was a so id piece of aluminum or steel, it	2 3 4 5	Culver, which is marked Exhibit 4, can you tell me what that depicts? A. That shows the gangway, which is the area where the gangplank is inserted. It's chained; it doesn't have
2 3 4 5 6	Q. Okay. A. They use basically, they're used in engine rooms, in the marine applications, anyway. And they're used as a if it was a so id piece of aluminum or steel, it would be pretty slippery, so these diamond plates are	2 3 4 5 6	Culver, which is marked Exhibit 4, can you tell me what that depicts? A. That shows the gangway, which is the area where the gangplank is inserted. It's chained; it doesn't have it has quite a reach from the step to the rail. And a
2 3 4 5 6 7	Q. Okay. A. They use basically, they're used in engine rooms, in the marine applications, anyway. And they're used as a if it was a so id piece of aluminum or steel, it would be pretty slippery, so these diamond plates are put on there for cecreasing the area that your shoe	2 3 4 5 6 7	Culver, which is marked Exhibit 4, can you tell me what that depicts? A. That shows the gangway, which is the area where the gangplank is inserted. It's chained; it doesn't have it has quite a reach from the step to the rail. And a normal gangplank would have probably a circular area of
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1	Page 22	í	Page 24
1	individual could grab ahold of that and step up on the	1	inches apart, and they're secured, welded onto the
2	step.	2	grading.
3	MR. RAUWORTH: I'll renew the previous	3	THE COURT: What material would the batons be
4	objection, your Flonor, by reason of nondisclosure.	4	made of?
5	THE COURT: All right.	. 5	THE WITNESS: It could be aluminum or steel.
6	BY MR. CONIARIS:	. 6	And they're welded on and
7	Q. Just a couple of questions, Captain Culver. What	7	THE COURT: Flat? Flat? Are they flat things
8	about the height of these? Can you tell or is that too	. 8	or what?
9	hard to judge?	9	THE WITNESS: No, they're well, they're
10	A. You mean the height of what, the rails?	10	usually U-shaped
11	Q. Yeah, the top rails.	11	THE COURT: I see.
12	A. I couldn't "could guess, but I don't know.	12	THE WITNESS: with the flat part of the U
13	There's a require nent for that in gangway design or	13	being welded onto the grading. So you have a surface
14	gangplank design. There's a requirement for that, and I	14	where you can your foot can rest on when you're going
15	forget what it is, offhand. But it is an	15	down or coming up the gangplanks.
16	inch-and-a-half-cliameter tubing that they're supposed to	16	BY MR. CONIARIS:
17	use, and that's probably above that on there, but I	:17	Q. Now, I notice that on the side of this ship there
18	can't tell from the picture how high it is.	18	are it looks like little windows. What are those?
19	Q. Are there any alternate, sir, surfaces that could be	19	
20	used instead of the diamond plate that would give better	20	A. Well, those are just drain holes for water on the deck.
21	traction?	21	
22		1	Q. Would it be a common occurrence on a ship to get
23	A. The normal gangplank uses what they call a nonskid	22	water on the deck?
24	material, or the Navy uses a grading THE COURT: Excuse me. What is a nonskid		A. Well, it's
25		24	THE COURT: I'll take judicial notice of it.
	material		MR. CONIARIS: Okay. That's all I have.
	Page 23	[Page 25
1	THE WITNESS: A nonskid material	1	THE COURT: If it rains, it sprays.
2	THE COUR Γ: made out of?	2	THE WITNESS: Yeah. As water comes over, it
3	THE WITNESS: A quick definition not a	3	takes over the bow, whatever, sure. That's what those
4	definition, but a quick analogy is you take a bucket of	4	are for, is to drain water off the deck of the ship.
5	paint and you throw a lot of sand in it, and then you	5	MR. CONIARIS: Thank you. That's all I have.
6	apply the paint with the sand on whatever. And when	6	Mr. Rauworth probably has some questions for you.
7	that dries, you have a sandpaper effect, so when your	, 7	THE COURT: Okay.
8	shoes come in contact with it, it grabs your shoe or the	, 8	CROSS-EXAMINATION
Ω			CICOSS-EZUMINITATION
9	shoe grabs the sand.	. 9	BY MR. RAUWORTH:
10	THE COUR Γ: Is there a regular product	10	BY MR. RAUWORTH: Q. Good morning, Mr. Culver.
10 11	THE COUR Γ: Is there a regular product manufactured of that kind?	10 11	BY MR. RAUWORTH: Q. Good morning, Mr. Culver. A. Good morning.
10 11 12	THE COURT: Is there a regular product manufactured of that kind? THE WITNESS: Yes, sir, there is.	10 11 12	BY MR. RAUWORTH: Q. Good morning, Mr. Culver. A. Good morning. Q. Now, you mentioned that well, strike that.
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Page 28 Q. And that me ans that everything on the ship ips from 2 side to side, to the left and to the right and then to 3 side to side, to the left and to the right and then to 4 side to side, to the left and to the right and then to 5 side, to the left, correct? A. I sure have. Q. Yall right. And you haven't been to se ay ourself since 1950 as serving officer, correct? 1 A. It sure does. 1 THE WITNESS. What a minute now. Some 15 so possible. 1 I was just asking you at eat off the deck. They're not. Most engine rooms, 20 so was earlied officer, correct? 1 I was just asking you at our officer rooms, 20 so was earlied the word "routine fine poors, 20 so was earlied the word "routine fine poors, 20 so was earlied the word "routine fine poors, 20 so was earlied the word "routine fine poors, 20 so was earlied to was earlied the word "routine fine poors, 20 so was earlied to see the side of the word "routine fine poors, 20 so was earlied the word "routine fine poors, 20 so was earlied the word "routi				
2 side to side, to the left and to the right and then to 3 the left, correct? 4 A. Correct. 5 Q. All right. And you've experienced that, sir? 6 A. I sure have. 7 Q. You've been in the engine room when that's 8 happering, correct? 9 A. Sure. 10 Q. Standing on the diamond plate, correct? 11 A. I sure have. 12 Q. That diamond plate takes on an angle, doesn't it, 13 sir? 14 A. It sure does. 15 Q. It can be wet and oily, too, can't it? 16 A. No, not necessarily. Wait a minute now. Some poople think that engine rooms are driry places with a lot of grease and oil. They're not. Most engine rooms, and they're rot grease and oil. They're not. Most engine rooms, a correct? 16 Q. I think your own testimony mentioned that oil and water - my sory - oil or water getting onto diamond plate engine room floors. 17 Page 27 1 I was just asking you about the possibility of oil and water - my sory - oil or water getting onto diamond plate engine room floors. 18 YMR RAUWORTH: 19 Q. And it is a couldition that is contemplated by marine engineers." 19 Page 27 20 A. Well, I'm not sure what you mean by "contemplated by marine engineers." 21 Q. Let the put it nother way. When someone is spossible. 22 THE WINNESS: Possible. 33 Page 27 34 A. Well, I'm not sure what you mean by "contemplated by marine engineers." 25 C. Q. Cath engine rooms floors. 26 THE WINNESS: Possible. 37 Page 27 38 A. Well, I'm not sure what you mean by "contemplated by marine engineers." 38 Page 17 Page 29 40 A. Well, I'm not sure what you mean by "contemplated by marine engineers." 41 C. Q. Cath of the experience of water and/or oil getting not the walking surface in an engine room. 42 A. Yeah, they my ght. 43 A. Yeah, they my ght. 44 A. Yeah, they my ght. 45 A. Yeah, they my ght. 46 A. Well, they would have to, wouldn't they? 47 A. A. Well, they would have to, wouldn't they? 48 A. Well, they would have to, wouldn't they? 49 A. No the coessarily. You both the absolution to the alking surface in an engine room solution the walking surface, correct? 40 A. Well, they wo		Page 26	1	Page 28
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a musk in an engine room, and if it does, water—if a flange leaks, water gets on the plate, it's immediately picked up picked	2		1	
4 A. Correct. 5 Q. All right. And you've experienced that, sir? 6 A. I sure have. 7 Q. You've been in the engine room when that's happening, correct? 9 A. Sure. 10 Q. Standing on the diamond plate, correct? 11 A. I sure have. 12 Q. That diamond plate takes on an angle, doesn't it, sir? 13 sir? 14 A. I sure does. 15 Q. It and be wet and oily, too, can't it? 16 A. No, not necessarily. Wait a minute now. Some pole think that engine rooms are dirty places with a lot of grease and oil. They're not. Most engine rooms. 16 pouc an eat off the deck. They're not wet, they're not oily and they're rot greasy. 17 Q. I think your swn testimony mentioned that oil and water angle tonio diamond plate in engine rooms, correct? 18 A. They can get on it, but not as a routine thing. 29 Q. Kay. I don't think I used the word "routine." So 20 Q. All right. And you haven't been to say ourself since 1950 as a serving officer, correct? 20 A. No, not necessarily. Wait a minute now. Some pole think that engine rooms are dirty places with a lot of grease and oil. They're not. Most engine rooms. 29 you can eat off the deck. They're not wet, they're not oily and they're rot greasy. 20 Q. I think your swn testimony mentioned that oil and water angle tonio diamond plate in engine rooms, correct? 21 Q. That treatment is not used in engine rooms even in the Navy, correct? 22 Q. That treatment is not used in engine rooms even in the Navy, correct? 23 A. Well, I'm not sure what you mean by "contemplated by marine engineers." 24 A. Well, I'm not sure what you mean by "contemplated by marine engineers." 25 Q. A. Well, I'm not sure what you mean by "contemplated by marine engineers." 26 Q. A. Well, I'm not sure what you mean by "contemplated by marine engineers." 27 Q. Let me put it nother way. When someone is specifying a mate i alf for a walking surface in an engine room offer to be professionally competent they have to take account of the experience of water and/or oil get the put it nother way. When someone is specifying a mate i alf for a walking	1		,	* * * *
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7 A. Just about. On all my ships, they did. 9 A. Sure. 9 since 1950 as a serving officer, correct? 10 A. Isrue have. 11 THE COURT: Idon't think things have changed on this subject since then. 12 THE COURT: Idon't think things have changed on this subject since then. 14 A. It sure does. 14 A. It sure does. 14 A. It sure does. 15 A. No, not necessarily. Wait a minute now. Some 16 A. No, not necessarily. Wait a minute now. Some 17 poor on a confect of the Ch. They're not. Most engine rooms, people think that engine rooms are dirty places with a 16 tof grease and oil. They're not. Most engine rooms, 18 you can eat off the deck. They're not weet, they're not oily and they're rot greasy. 20 illy and they're rot greasy. 2	1			
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10 Q. Standing on the diamond plate, correct? 10 A. I sure have. 11 A. I sure have. 12 Q. That diamond plate takes on an angle, doesn't it, 12 d. That diamond plate takes on an angle, doesn't it, 12 d. That diamond plate takes on an angle, doesn't it, 12 d. A. It sure does. 13 A. It sure does. 14 A. It sure does. 15 Q. It can be wet and oily, too, can't it? 15 BY MR. RALWORTH: 16 A. No, not necessarily. Wait a minute now. Some people think that engine rooms are dirty places with a lot of grease and oil. They're not Most engine rooms, 18 Q. Now, you don't see - strike that. 17 Q. Now, you don't see - strike that. 18 You described a nonskid treatment a little while ago involving paint and sand, if you will, correct? 20 A. Well, that was an analogy, each. 21 A. Well, that was an analogy, each. 22 Q. Cand you're - 23 A. No. No. 24 A. No. No. 25 Q. And you're - 26 Q. Now, you don't see - strike that. 27 A. Well, that was an analogy, each. 28 Q. Okay. If so - Q. Well, that was an analogy, each. 29 Q. Now, you don't see - strike that. 29 Q. Now, you don't see - strike that. 29 Q. Now, you don't see - strike that. 29 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you don't see - strike that. 20 Q. Now, you d	t	-, -		
A. I sure have. Q. That diamond plate takes on an angle, doesn't it, sir? A. A. It sure does. A. A. It sure does. A. No, not necessarily. Wait a minute now. Some people think that engine rooms are dirty places with a lot of grease and oil. They're not Most engine rooms, oily and they're rot greasy. Q. I dink your wan testimony mentioned that oil and water can get onto diamond plate in engine rooms, orrect? Q. Okay. I don't think I used the word "routine." So possible. THE WITNESS: No, they haven't changed. No, that's not correct. BYMR. RAUWORTH: Q. I withdraw the question, sir. A. All right. I've been on ships since then. Q. Now, you don't see – strike that. You described a nonskid treatment a little while ago involving paint and sand, if you will, correct? 23 correct? 24 A. They can get on it, but not as a routine thing. 25 Q. Okay. I don't think I used the word "routine." So Q. Okay. I don't think I used the word "routine." So THE COURT: I don't think things have changed on this subject since then. No, that's not correct. BYMR. RAUWORTH: A. Well, that was an analogy, yeah. Q. I and you're - Page 27 Page 29 1 I was just asking you about the possibility of oil and water - I'm sorry - oil or water getting onto diamond plate engine room floors. THE COURT: I don't think things have changed on this subject since then. No, that's not correct. A. Well, that was an analogy, yeah. Q. I and you're - Page 29 1 A. It's used on the decks on Navy ships Page 29 1 A. It's used on the decks on Navy ships Q. Okay. It's 1 A. Well, that was an analogy. Questioned the subjection of the malk in subject since then. Q. And it is a condition that is contemplated by marine engineers. Q. And it is a condition that is contemplated by marine engineers. Q. Let me put it mother way. When someone is specifying a mate ial for a walking surface, correct? A. Yeah, they mght. Q. Clay they would have to, wouldn't they? A. Yeah, they mght. Q. Well, they would have to, wouldn't they? A. Yeah, they mg	1			
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15 Q. It can be wet and oily, too, can't it? 16 A. No, not necessarily. Wait a minute now. Some 16 people think that engine rooms are dirty places with a 16 people think that engine rooms are dirty places with a 17 you can eat off the deck. They're not wet, they're not oily and they're rot greasy. 19 you can eat off the deck. They're not wet, they're not oily and they're rot greasy. 20 Q. I think your 'wn testimony mentioned that oil and water can get onto diamond plate in engine rooms, correct? 21 Q. I think your 'wn testimony mentioned that oil and water can get onto diamond plate in engine rooms, correct? 22 A. They can get on it, but not as a routine thing. 25 Q. Okay. I don't think I used the word "routine." So 26 Page 27 27 Page 27 28 A. They can get on it, but not as a routine thing. 29 water - I'm sorry oil or water getting onto diamond plate engine room floors. 30 plate engine room floors. 41 THE COURT: I'll take judicial notice that it is possible. 42 THE WITNESS: Possible. 43 Pay MR. RAUWORTH: 44 A. No. No. 45 Q. And you're 46 Page 27 47 A. Well, I'm not sure what you mean by "contemplated by marine engineers, correct? 48 A. It's a little bit scary at times, too. 49 Q. Let me put it inother way. When someone is specifying a mate ial for a walking surface in an engine room, in order to be professionally competent they have to take account of the experience of water and/or oil getting onto the walking surface, correct? 40 A. Not necessarily. You know, this is these are standard that have been going on for years. These platings are standurd things. Marine engineers: 41 Q. Well, they would have to, wouldn't they? 42 A. It's a little bit scary at times, too. 43 Let's talk about the angle here for a moment. 44 MR. RAUWORTH: That stuff hasn't been brought forward yet, so we can make it 20 and take it out of order. 45 THE CLERK: Check with your brother and find out of order. 46 A. Well, they would have to, wouldn't they? 47 A. Yeak, they mght. 48 C. And when ships are rolling, they can experience a		sir?	:13	THE WITNESS: No, they haven't changed.
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1 I was just asking you about the possibility of oil and 2 water I'm sorry oil or water getting onto diamond 3 plate engine room floors. 4 THE COURT: I'll take judicial notice that it is 5 possible. 5 possible. 6 THE WITNESS: Possible. 7 BY MR. RAUWORTH: 8 Q. And it is a condition that is contemplated by marine 9 engineers, correct? 10 A. Well, I'm not sure what you mean by "contemplated by 11 marine engineers." 12 Q. Let me put it another way. When someone is 13 specifying a material for a walking surface in an engine 14 room, in order to be professionally competent they have 15 to take account of the experience of water and/or oil 16 getting onto the walking surface, correct? 17 A. Yeah, they m ght. 18 Q. Well, they would have to, wouldn't they? 19 A. Not necessarily. You know, this is these are 20 getsigning the shir goes to the standard that the Navy 21 says you've got to put in a ship. 22 G. Okay. 24 BY MR. RAUWORTH: 25 D. Okay. 26 C. Well, they would not be standard that the Navy 27 says you've got to put in a ship. 28 A. It's used on the decks on Navy ships 29 C. Okay. It's 30 A throughout. 4 Q. Okay. It's 4 Q. Okay. It's 4 Q. Okay. It's 4 Q. Okay. It's 4 Q. Where diamond plate is used? 4 Q. Where diamond plate is used? 4 A. That's correct. 8 Q. And when ships are rolling, they can experience a considerable angle of roll, correct? 9 considerable angle of roll, correct? 10 A. That's right. 11 Q. Okay. 12 Q. Okay. 13 A throughout. 4 Q. Okay. 14 Q. Okay. 15 A. No. No need for them in engine rooms. 6 Q. And when ships are rolling, they can experience a considerable angle of roll, correct? 10 A. That's right. 11 Q. Okay. 12 Q. Okay. 13 A throughout. 14 Q. Okay. 15 A. That's correct. 16 Q. A. That's right. 17 A. That's right. 18 Q. Okay. 19 Q. Okay. 10 Q. Okay. 11 Q. Okay. 11 Q. Okay. 11 Q. Okay. 12 Q. Okay. 13 A. That's used in engine rooms? 14 Q. Okay. 15 A. That's correct. 18 Q. And when ships are rolling, they can experience a considerable angle of roll, correct? 18 Q.				A COLUMN TO THE
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25 A. Now, the original guys that designed those things, 25 Q. You, sir, have never been aboard the Hurricane, have	1	· · · · · · · · · · · · · · · · · · ·	1	BY MR. RAUWORTH:
	25	A. Now, the original guys that designed those things,	25	Q. You, sir, have never been aboard the Hurricane, have

1	Page 30)	Page 32
_ +	you?		
2	A. Say again?	1 2	in your report any information about any comparative characteristics of diamond plate versus any other
3	Q. You've never been aboard the Hurricane, have you?	3	substance, have you?
4	A. No.	4	THE COURT: Well, the report speaks for itself.
5	THE COURT: Is the Hurricane the ship in	5	THE WITNESS: I thought I did, but I can't
6	question?	6	remember. I don't recall. I thought I mentioned
7	MR. RAUWORTH: Yes, the Hurricane II. I'm	: 7	diamond plate and I mentioned a nonskid and I mentioned
8	sorry.	8	batons.
9	THE WITNESS: No, I have not.	9	THE COURT: Whether he answers it one way or
10	BY MR. RAUWORTH:	10	another isn't going to control. Whatever's in the
11	Q. So you've not seen this ramp in the flesh yourself,	11	report, is in the report; whatever isn't in the report,
12	correct?	12	isn't.
13	A. No.	13	MR. RAUWORTH: Sure, your Honor, I just want to
14	THE COURT: That's a scary name for a ship.	14	clarify what we're dealing with here.
15	MR. RAUWORTH: It's marketing, your Honor, you	15	BY MR. RAUWORTH:
16	know, passenger excitement.	:16	Q. You're not in a position to testify to, let's say,
17	THE WITNESS: A scary name.	17	the coefficient of friction of diamond plate as compared
18	BY MR. RAUWORTH:	18	to any other substance, true?
19	Q. And your report doesn't mention any tests of any	19	A. That's true.
20	surfaces, as I read it. I'm correct about that, right?	20	Q. Okay. So, for example
21	A. I don't understand the question.	21	A. I did talk about the coefficient of friction in my
22	Q. You provided a report to Mr. Coniaris that was	22	report, though.
23	forwarded to me?	23	Q. Yes, you did. And you did it in an abstract way,
24	THE CLERIC: Do you want to give what it is?	24	didn't you, sir?
25	MR. RAUWORTH: Right.	25	A. I did it in a technical way.
	Page 31		Page 33
1	THE CLERK: Exhibit No. 20.	1	Q. But you didn't do it with reference to any
2	MR. RAUWORTH: Yes. Thank you, George.	2	particular substance that's at issue in this case,
3	BY MR. RAUW()RTH:	3	correct?
4	Q. So in that report there's nothing written about any	i .	
1 4	T. at that top out the bill morning the bill about the bill	4	A. That's correct.
5	tests on, for example, the ramp that you've seen in	4 5	A. That's correct.Q. All right. So we're not in a position to you're
	· · · · · · · · · · · · · · · · · · ·	i	Q. All right. So we're not in a position to you're
5	tests on, for example, the ramp that you've seen in	5	Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the
5 6	tests on, for example, the ramp that you've seen in pictures here this morning?	5	Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the difference in coefficient of friction of diamond plate
5 6 7	tests on, for example, the ramp that you've seen in pictures here this morning? A. No.	5 6 7	Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the
5 6 7 8	tests on, for example, the ramp that you've seen in pictures here this morning? A. No. Q. Right. And so you're not in a position to testify	5 6 7 8	Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the difference in coefficient of friction of diamond plate when it's wet versus when it's dry, correct?
5 6 7 8 9 10 11	tests on, for example, the ramp that you've seen in pictures here this morning? A. No. Q. Right. And so you're not in a position to testify to any tests of that surface, correct? A. Of the surface of that particular gangplank or the scaffolding?	5 6 7 8 9	Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the difference in coefficient of friction of diamond plate when it's wet versus when it's dry, correct? A. Correct.
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	tests on, for example, the ramp that you've seen in pictures here this morning? A. No. Q. Right. And so you're not in a position to testify to any tests of that surface, correct? A. Of the surface of that particular gangplank or the scaffolding? Q. You're not in a position to testify as to any of that, true? A. Testify I'm not sure what I'm supposed to be testifying to. Q. Well, you're restifying right now. A. I know. But, I mean, test? Q. Testify. THE COURT: He's just saying that you're not testifying to any particular test of the gangplank that is involved in this case? THE WITNESS: No, I know nothing about any tests	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the difference in coefficient of friction of diamond plate when it's wet versus when it's dry, correct? A. Correct. Q. You did say that in your view it's pretty common sense that substances like that are have somewhat less traction when they're wet than when they're dry? A. Right. Q. And you referred to that as common sense, didn't you? A. Yes, I did. Just like wood. If you put water on wood, you're going to skid, too. Q. Same thing with an asphalt surface in the street, right? A. Sure. Q. Likewise, the sidewalk, right? A. Sure.
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	tests on, for example, the ramp that you've seen in pictures here this morning? A. No. Q. Right. And so you're not in a position to testify to any tests of that surface, correct? A. Of the surface of that particular gangplank or the scaffolding? Q. You're not in a position to testify as to any of that, true? A. Testify I'm not sure what I'm supposed to be testifying to. Q. Well, you're restifying right now. A. I know. But, I mean, test? Q. Testify. THE COURT: He's just saying that you're not testifying to any particular test of the gangplank that is involved in this case? THE WITNESS: No, I know nothing about any tests	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. All right. So we're not in a position to you're not here meaning to testify to, for example, the difference in coefficient of friction of diamond plate when it's wet versus when it's dry, correct? A. Correct. Q. You did say that in your view it's pretty common sense that substances like that are have somewhat less traction when they're wet than when they're dry? A. Right. Q. And you referred to that as common sense, didn't you? A. Yes, I did. Just like wood. If you put water on wood, you're going to skid, too. Q. Same thing with an asphalt surface in the street, right? A. Sure. Q. Likewise, the sidewalk, right? A. Sure.

A. On a flat surface. Q. Well, virtually everything under any circumstances is a little more all peper when it's wet, isn't it? THE COURT: That's pretty basic. THE WITNESS: But this isn't a flat surface that we're talking abcut. RYMR. RAUWORTH: Q. All right. Your - A. The coefficient of friction that I used in that report assumed a flat piece of metal, just with - terst you don't do it with diamond plate, you don't do you don't do it with diamond plate, you don't do you don't do it with diamond plate, you do it with do with diamond plate, you do it with diamond plate, you do you do it with do	Į	Page 34		Page 36
2 Q. Well, virtually everything under any circumstances is a little more slipper when it's wet, in't it'? 4 THE COURT: That's pretty basic. 5 THE WITNESS: But this isn't a flat surface that we're talking about. 7 By MR. RAUWORTH: 9 A. The coefficient of friction that I used in that that's now you get the coefficient of friction on an test: you don't do'it with indissid, you do it with nossid, you do it with a common piece of metal. It's not laking into consideration nonside, if's not taking into consideration in the report had to do with the method of determining the report had to do with the method of dete	1		1	
3 is a little more all pupery when it's week, isn't it? 4 THE COURT: That's pretty basic. 5 THE WITNESS: But this isn't a flat surface that 6 we're talking about. 8 YMR. RAUWORTH: 9 Q. All right. Your 9 A. The coefficient of friction that I used in that 10 report assumed a flat piece of metal, just with 11 that's how you get the coefficient of friction on a 12 test: you don't do it with diamond plate, you don't do 13 it with nonskid, you do it with a common piece of metal, 13 it with nonskid, you do it with a common piece of metal, 14 20 pounds pulling 150 pounds, you get the 5 coefficient of the number is on an incline basis on a flat 15 piece of metal. It's not taking into consideration anything 16 ests. 17 the number is on an incline basis on a flat 18 piece of metal. It's not taking into consideration anything 19 ests. 10 Q. Okay. Your discussion of coefficient of friction in 10 the report had to do with the method of determining 11 that, correct? 12 A. The numbers, right. 13 just that, correct? 14 A. The reported in this case, correct? 15 A. The technical numbers that were used for the 16 coefficient of friction. 17 Q. Well, It's just not the correct tabout that? You did not do so? 18 YMR. RAUWORTH: 18 YMR. RAUWORTH: Motion to strike, Judge, 19 You did not say it was unsafe, correct? 20 Q. Nay. 21 A. The tabout that? You did not do so? 22 A. I did not bary you testify to an opinion that the diamond plate surface on this particular ramp was unsafe. 23 A. The numbers, right. 24 Coefficient of friction. 25 Q. Okay. 26 A. The sample of whatever. 26 Q. Okay. 27 Oy Undid not say it was unsafe. 28 A. The almost of the strip. 29 A. The sample of whatever. 30 A. The almost of the strip. 31 Sustein this case, correct? 32 A. The fland to do with any surface that's at issue in this case, correct? 33 A. The numbers of the strip of the	ı			
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6 We're talking about. 7 BY MR. RAUWORTH: 8 Q. All right. Your - 9 A. The coefficient of friction that I used in that 9 ceport assumed a flat piece of metal, just with - 11 that's how you get the coefficient of friction on a 12 test: you don't do it with diamond plate, you don't do 13 it with nonskid, you do it with a common piece of metal, 14 2 opounds pulling 50 pounds, you get the 5 coefficient 15 is the normal coefficient. So that's gon tonking do 16 with the number is on an incline basis on a flat 17 piece of metal. I's not taking into consideration a nonskid, i's not taking into consideration and the report had to do with the method of determining that, correct? 19 Q. Okay. Your discussion of coefficient of friction in the report had to do with the method of determining that, correct? 20 A. The numbers, right. 21 A. The numbers, right. 22 A. The technical numbers that were used for the Page 35 1 coefficient of friction. 2 Q. And it had nething to do with any surface that's at issue in this case, correct? 4 A. No, it had to swith the angle. 5 Q. Okay. 6 Q. Okay. 7 Okay it had one thing to do with any surface that's at issue in this case, correct? 4 A. No, it had to swith the angle. 5 Q. Okay. 6 A. The angle of whatever. 7 Q. But you're net lestifying to any opinions about the coefficient of friction of any surface that's at issue in this case, correct? 4 A. That's correct. 5 Q. Okay. 6 A. The angle of whatever. 7 Q. But you're net lestifying to any opinions about the coefficient of friction of any surface that's at issue in this case, correct? 6 A. The angle of whatever. 9 in this case, correct? 10 A. That's correct. 11 THE COURT: He doesn't have to testify to an opinion to be able to say that one substance is – has opinion to be able to say that one substance is – has opinion to be able to say that one substance is – has opinion to be able to say that one substance is – has opinion to be able to say that one substance is – has opinion to be able to say that one substance is – has element that we were	I	• • •		
7 BY MR. RAUWORTH: 7 Q. Well, I'm asking you about a ramp. It's the piece that connects the vessel to the barge. If you want to proport assumed a flat piece of metal, just with — that's how you get the coefficient of a twith diamond plate, you don't do it with diamond plate, you don't do it with monskid, you do it with a common piece of metal, it with nonskid, you do it with a common piece of metal, it with nonskid, you do it with a common piece of metal, it with nonskid, you do it with a common piece of metal, it with nonskid, you do it with a common piece of metal, it is the normal coefficient. So that's got nothing do it is the normal coefficient. So that's got nothing do with — the number is on an incline basis on a flat piece of metal. It's not taking into consideration anything else else. 7 Q. Okay. Your discussion of coefficient of friction in the report had to do with the method of determining that provided that procree? 8 A. The number, right. 9 A. The rumber, right. 10 Q. Right? 11 Coefficient of friction. 12 Page 35 Page 37 1 Coefficient of friction. 12 Q. And it had nething to do with any surface that's at issue in this case, correer? 2 Q. But you're net testifying to any opinions about the coefficient of fric of any surface that's at issue in this case, correer? 2 Q. But you're net testifying to any opinions about the coefficient of fric ion of any surface that's at issue in this case, correer? 3 A. The angle of whatever. 4 A. No, it had to be with the angle. 5 Q. Okay. 5 Q. Okay. 6 A. The angle of whatever. 9 Q. But you're net testifying to any opinions about the coefficient of fric ion of any surface that's at issue in this case, correer? 10 A. That's correct. 11 THE COURT: He doesn't have to testify to an opinion that the coefficient of friction in the angle. 12 Q. Okay. 13 A. The angle of whatever. 14 A. No, it had to be with the angle. 25 Q. Day. 26 A. The angle of whatever. 27 Q. But you're net testifying to any opinions about the coefficient of fric ion of any surface				* *
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19 else. 19 Q. So I did not hear you testify to an opinion that the diamond plate surface on this particular ramp was unsafe. Am I correct about that? You did not do so? that, correct? 22 A. I did not say it was unsafe? 23 A. The numbers, right. 23 Q. You did not say it was unsafe, correct? 24 A. I did not say it was unsafe, correct? 25 A. I did not say it was unsafe, correct? 26 A. I don't think so, but it is unsafe. 27 A. I don't think so, but it is unsafe. 28 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 20 A. I don't think so, but it is unsafe. 20 A. I don't think so, but it is unsafe. 20 A. I don't think so, but it is unsafe. 20 A. I don't think so, but it is unsafe. 20 A. I don't think so, but it is unsafe. 21 A. I don't think so, but it is unsafe. 22 A. I don't think so, but it is unsafe. 23 A. I don't think so, but it is unsafe. 24 A. I don't think so, but it is unsafe. 26 A. I don't think so, but it is unsafe. 26 A. I don't think so, but it is unsafe. 27 A. I don't think so, but it is unsafe. 28 A. I don't think so, but it is unsafe. 28 A. I don't think so, but it is unsafe. 28 A. I don't think so, but it is unsafe. 28 A. I don't think so, but it is unsafe. 28 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so, but it is unsafe. 29 A. I don't think so think surface that's at issue in this case, correct? 30 A. No, it had to so with the any surface that's at issue in this case, correct?	I	· ·	1	
20 Q. Okay. Your discussion of coefficient of friction in the report had to do with the method of determining that, correct? 21 that, correct? 22 A. The numbers, right. 23 Q. Right? 24 Q. Right? 25 A. The technical numbers that were used for the Page 35 Page 37 1 coefficient of friction. 2 Q. And it had nothing to do with any surface that's at issue in this case, correct? 4 A. No, it had to do with the angle. 4 A. No, it had to do with the angle. 5 Q. Okay. 6 A. The angle of whatever. 7 Q. But you're not testifying to any opinions about the coefficient of fric ion of any surface that's at issue in this case, correct? 10 A. That's correct. 11 THE COURT: He doesn't have to testify to an opinion to be able to say that one substance is — has got more traction, because it has more grit or whatever it is, than another substance. I can take judicial notice of that fact 1 MR. RAUWORTH: Understood, Judge. But I think that's another way of pointing out the common sense element that we were touching on before. I'm simply trying to clarify what we're getting from this witness and what he's mer ning to bring to bear with his background. THE COURT: I haven't heard him make a claim beyond what I think he reported. A. RAUWORTH: All right. 20 diamond plate surface on this particular ramp was unsafe? A. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't think so, but it is unsafe. BA. I don't have sup it was unsafe? BA. I don't have law unsafe? BA. I don't have any knowled this surface correct? A. The angle of whatevit touched this surface correct? A. The surface being — BA.	i .			· · · · · · · · · · · · · · · · · · ·
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23 Q. You did not say it was unsafe, correct? 24 Q. Right? A. The technical numbers that were used for the Page 35 Coefficient of friction. 2 Q. And it had nothing to do with any surface that's at issue in this case, correct? 4 A. No, it had to Jo with the angle. 5 Q. Okay. 6 A. The angle of whatever. 7 Q. But you're not testifying to any opinions about the coefficient of friction of any surface that's at issue in this case, correct? 9 in this case, correct? 1 A. That's correct. 1 C. Mark RAUWORTH: 1 THE COURT: He doesn't have to testify to an opinion to be able to say that one substance is – has got more traction, because it has more grit or whatever it is, than another substance. I can take judicial notice of that fact 1 MR. RAUWORTH: Understood, Judge. But I think that's another way of pointing out the common sense element that we were touching on before. I'm simply trying to clarify what we're getting from this witness and what he's mer ning to bring to bear with his background. 2 MR. RAUWORTH: All right. 2 Q. MR. RAUWORTH: Only by way of protecting myself from peyoide. 2 MR. RAUWORTH: All right. 2 MR. RAUWORTH: Only by way of protecting myself from peyoide. 3 Q. You don't have any knowledge of myself from peyoide. 4 A. That's portry standard stuff. 5 Q. Okay. You're not aware of strike that. 5 A. That's protry standard stuff. 6 MR. RAUWORTH: And, your Honor, I'm pursuing that line of questioning with a reservation of my objection about his testimony. 5 MR. RAUWORTH: Only by way of protecting myself from peyoide. 5 MR. RAUWORTH: All right. 5 Q. Okay. You're not aware of strike that. 6 MR. RAUWORTH: All right. 6 MR. RAUWORTH: All right. 7 MR. RAUWORTH: Only by way of protecting myself from peyoide. 8 MR. RAUWORTH: Only by way of protecting myself from peyoide. 9 MR. RAUWORTH: All right. 9 A. The Tour think is the reported. 9 A. The Tour the way of pointed in the protecting myself from peyoide. 9 A. The COURT: I haven't heard him make a claim background. 9 A. The COURT: I haven't heard him make a clai	I	•	1	
24 Q. Right? A. The technical numbers that were used for the Page 35 Page 37 1 coefficient of friction. Q. And it had nothing to do with any surface that's at 3 issue in this case, correct? A. No, it had to do with the angle. Q. Okay. A. The angle of whatever. Q. But you're not testifying to any opinions about the coefficient of friction of any surface that's at issue in this case, correct? A. The angle of whatever. Q. But you're not testifying to any opinions about the coefficient of friction of any surface that's at issue in this case, correct? A. The surface being — Q. The diamond plate on the ramp? A. That's correct. THE COURT: He doesn't have to testify to an opinion to be able to say that one substance is — has 3g ot more traction, because it has more grit or whatever it it, than another substance. I can take judicial notice of that fact MR. RAUWORTH: Understood, Judge. But I think that's another way of pointing out the common sense element that we were touching on before. I'm simply trying to clarify what we're getting from this witness and what he's merning to bring to bear with his background. MR. RAUWORTH: All right. A. I don't think so, but it is unsafe. Page 37 MR. RAUWORTH: Motion to strike, Judge. THE COURT: The whole thrust of his testimony is, obviously, it's unsafe. I'm not going to strike it. BY MR. RAUWORTH: Motion to strike, Judge. THE COURT: The whole thrust of his testimony is, obviously, it's unsafe. Page 37 MR. RAUWORTH: Motion to strike, Judge. THE COURT: The whole thrust of his testimony is, obviously, it's unsafe. I'm not going to strike it. BY MR. RAUWORTH: Motion to strike, Judge. THE COURT: I haven't heard him make a claim beyond what I think he reported. Page 37 A. I don't think so, out is in small was a louder. A. Indn't think so, the whole thrust of his testimony is, obviously, it's unsafe. I'm not going to strike it. BY MR. RAUWORTH: Motion to strike, Judge. THE COURT: I haven't heard him make a claim beyond what I think he reported. Page 37 A. Indn't think s	l .			•
25 Q. I beg your pardon? Page 37 1 coefficient of friction. 2 Q. And it had nothing to do with any surface that's at issue in this case, correct? 3 is, obviously, it's unsafe. I'm not going to strike it. 4 A. No, it had to do with the angle. 5 Q. Okay. 6 A. The angle of whatever. 7 Q. But you're not testifying to any opinions about the coefficient of friction of any surface that's at issue in this case, correct? 9 Q. Vou haven't touched this surface, correct? 10 A. That's correct. 11 THE COURT: He doesn't have to testify to an opinion to be able to say that one substance is has got more traction, because it has more grit or whatever it is, than another substance. I can take judicial notice of that fact 14 it is, than another substance. I can take judicial notice of that fact 15 MR. RAUWORTH: Understood, Judge. But I think that's another way of pointing out the common sense element that we were touching on before. I'm simply trying to clarify what we're getting from this witness and what he's mer.ning to bring to bear with his background. 21 THE COURT: I haven't heard him make a claim beyond what I think he reported. 22 MR. RAUWORTH: All right. 25 Q. I beg your pardon? MR. RAUWORTH: Motion to strike, Judge. 16 MR. RAUWORTH: Motion to strike, Judge. 17 MR. RAUWORTH: Motion to strike, Judge. 18 MR. RAUWORTH: Motion to strike, Judge. 19 THE COURT: The whole thrust of his testimony is, obviously, it's unsafe. I'm not going to strike it. 19 Q. Now, sir, you haven't touched this surface, correct? 20 A. The surface being Q. You haven't touched this surface, correct? 21 A. The surface being Q. You haven't touched this surface, correct? 22 A. The surface being Q. You haven't touched this surface, correct? 23 A. The surface being Mo. No. No, I haven't. 24 A. The surface being Q. You haven't touched this surface, correct? 25 A. The surface being Mo. No. No, I haven't. 26 A. The surface being Mo. And you don't have any knowledge of its observation of its dark you see in the picture, correct? 31 A	1		1	
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	Page 38	;	Page 40
1	unsafe is, therefore, not based on any objective	1	to it or a name or I mean, we don't want to pin you
2	knowledge you have about that surface, correct?	2	to the wall, I have to know whether there's a regulation
3	THE COURT: I understand that.	3	of some kind that I ought to observe or there isn't.
4	BY MR. RAUWORTH:	4	(Pause.)
5	Q. And I take it that you are having reference to some	, 5	THE WITNESS: Well, the Navy Department drawing,
6	sort of standard when you say that it's unsafe to use	6	the Coast Guard Safety Afloat spec, and there's an OSHA
7	diamond plate; is that correct, sir?	7	requirement, too.
8	A. On an incline surface, that's correct.	8	BY MR. RAUWORTH:
9	Q. Okay. And the I saw you make reference to in	. 9	Q. Is that it?
10	your report to certain standards used by the Navy. Do I	10	A. Yeah. OSHA, Coast Guard and Navy, right.
11	recall that right?	11	Q. Okay. So am I to understand, then, that it's your
12	A. That is correct.	12	professional opinion that if a fitting on this whale
13	Q. And those are the ones you're referring to?	13	watch vessel doesn't comply with a Navy standard, then
14	A. I did refer to that, yes.	14	it's improper; is that right?
15	Q. Okay. And that's the basis for your view that	15	A. I don't think it complies with OSHA standards
16	diamond plate is unsafe, correct?	16	either.
17	A. No. My personal experience, too, and the Merchant	17	Q. I'm asking you about the Navy standard, sir.
18	Marine ships use diamond plate, too. Coast Guard	18	THE COURT: No. The question is if it violates
19	regulations require that, too. So not just the Navy	19	the Navy standard.
20	ships have it, the Merchant ships have it, too.	20	THE WITNESS: Yes, it does violate the Navy
21	Q. I'm asking you about the use of diamond plate on a	21	standard. Yes.
22	walkway from a vessel to shore.	22	BY MR. RAUWORTH:
23	A. It's unsatisfactory.	23	Q. Does it have to conform to the Navy standard?
24	Q. It's unsatisfactory because it doesn't comply with	24	A. This boat?
25	some Navy standard; is that it?	25	Q. Yes.
	Page 39		
	rage 55		Page 41
1	A. It doesn't comply with the Coast Guard standards,	1	A. No.
2	A. It doesn't coraply with the Coast Guard standards, too.	2	A. No. Q. All right. Then we can take that
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			• • •
	Page 42	}	Page 44
1	validity of his opinions, Judge.	1	THE WITNESS: That's my understanding, and
2	THE COURT: You can ask him what the you can	2	that's what I did in the research for this job.
3	ask him what standards he's applied, but it's for me to	3	THE COURT: Let me ask you this: If I decide
4	decide whether they're correct standards or not.	4	if I find that as a matter of law the Coast Guard is not
5	MR. RAUWORTH: Well, it also reflects on his	. 5	bound by the OSHA regulations, would you still believe
6	general competence in terms of performing his work as an	. 6	that this material violated independent Coast Guard
7	expert.	7	requirements?
8	BY MR. RAUW:DRTH:	8	THE WITNESS: I don't think the Coast Guard has
9	Q. Sir, there is ro Coast Guard regulation that imposes	9	requirements for this. They use the OSHA standards.
10	OSHA standards on vessels of this kind, is there?	10	THE COURT: I understand.
11	A. There is.	11	BY MR. RAUWORTH:
12	Q. Can you state it for us?	12	Q. Sir, what body of regulations does the Coast Guard
13	A. Well, I don't have the standard with me, but I have	13	apply to this vessel?
14	it at home.	14	A. The vessel?
15	THE COURT: Can you satisfy it in writing under	15	Q. Yes.
16	oath hereafter?	16	A. The whole vessel?
17			
	THE WITNESS: The OSHA requirement I'd have	17	Q. What body of regulations does the Coast Guard apply
18	to drag out the Coast Guard regulations that refer to	18	to the vessel?
19	the OSHA standard on gangplanks. The Coast Guard	19	A. The Coast Guard Regulations.
20	BY MR. RAUWORTH:	20	Q. Where are they found?
21	Q. Right.	21	A. You find them in the library.
22	A regulations, they call it, spell out OSHA	22	Q. And what citation? What's the title of the Coast
23	standards for gangplanks.	23	Guard of the regulations that applies to this vessel?
24	Q. And you can t tell us where that is, sir?	24	A. That's the name of it: Coast Guard Regulations.
25	A. I can tell you. Chapter 14, OSHA requirements for	25	And there are several chapters that deal with machinery,
	Page 43	1	Page 45
1			1490 40
1	walking and wall;ing surfaces, page 1 through 6.	1	the hull.
1 2	walking and wall;ing surfaces, page 1 through 6. Q. That's an OSHA requirement that relates	1 2	the hull.
1			
2	Q. That's an OSHA requirement that relates	2	the hull. Q. When's the last time you looked at regulations that
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	Page 46		Page 48
1	don't know really what you're driving at. Sure I know	1	to use something.
2	what they have to do on this ship, but it's the size of	2	Q. So you withdraw that statement I just read to you,
3	the ship, the tonnage of the ship. There are so many	3	correct?
4	and we're looking at all kinds of ships: steel ships,	4	A. What was it? Read it again, please?
5	wooden ships.	5	Q. "The gangway must be kept clear of any substance
6	Q. Right.	6	likely to cause any person to slip or fall (this
7	A. I can't I just can't	7	includes water)."
8	THE COURT: Are you telling me on the basis of	8	A. That's a perfectly good statement.
9	your personal experience you know that whatever the law	9	Q. So, then, how is it that people are supposed to get
10	is, the Coast Guard, in fact, does follow OSHA	10	off of a vessel, or onto it, when it's raining?
11	regulations?	11	A. People have to help them on and off.
12	THE WITNESS: That's my understanding.	12	Q. You didn't say that here. You said that the gangway
13	THE COURT: What's the basis of your	13	has to be kept clear of water, didn't you, sir?
14	understanding?	14	A. Okay. Keep it clear of water, then.
15	THE WITNESS: Looking up the regulations.	15	Q. And how do you do that?
16	THE COURT: Okay.	16	A. Well, with mops, squeegees or whatever. There's
17	THE WITNESS: The Coast Guard Regulations.	17	ways to do it. If it's raining real hard, you probably
18	MR. RAUWORTH: Well, your Honor, once again,	18	wouldn't be able to do it.
19	I'd	19	
20	THE WITNESS: And also, I've talked to	20	Q. All right. And so what's a reasonable mariner supposed to do when it's raining real hard?
21	professional people that build gangplanks on the	21	• •
22	telephone alumi 1um American Aluminum Company, and	22	A. He's supposed to help the people off the boat.
23	they gave me insight.	23	Q. And where is it that you find a standard that says
24	THE COURT: That wouldn't help me much.	24	that it is improper to traverse a gangway when it's wet?
25	THE WITNESS: Yeah.		A. There isn't one. I just said that the crew of the
23	THE WITNESS: Tean.	25	ship would have to help the people off if the thing was
	Page 47	İ	Page 49
1	Page 47 BY MR. RAUWC'RTH:	1	Page 49 wet. But this is not a good gangplank to begin with.
1 2	BY MR. RAUWC'RTH: Q. And your conversations you cited one of them.		
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4 Q. Okay. And that the —I assume that you are basing your opinion on some kind of a published standard; is that right? 7 BY MR. RAUWORTH: Exhibit 20 you, so you have a close view of it, Exhibit — 17 MR. RAUWORTH: Exhibit 20 You, so you have a close view of it, Exhibit — 18 MR. RAUWORTH: Exhibit 20 You, so you have a close view of it, Exhibit — 18 MR. RAUWORTH: Exhibit 20 You, so you have a close view of it, Exhibit — 19 MR. RAUWORTH: Exhibit 20 You you you you you be people going up that ramp? You alb to see the ramp in this picture, sir? You alb to see the ramp in this picture, sir? You alb to see the ramp in this picture, sir? You will you you you see people going up that ramp? You you you you you were you see people going up that ramp? You you you you you you see people going up that ramp? You y	3	That actually, your Honor, is in the testimony	3	· ·
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THE COURT: What's the number of the exhibit? BY MR. RAUWORTH: Exhibit 20. A reyou able to see the ramp in this picture, sir? A. Just about. Q. All right. Do you see people going up that ramp? A. Yes, I see a person going up that ramp. That's right. MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. BY MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. Page 51 A. I sure did. Q. Okay. And I'm going to put to one side the question of the use of diamond plate. You've talked about that? Page 51 A. I sure did. Q. What I would like to talk to you now about is a question of angle because that's the other parameter that I think you disclosed in your report. That is the angle of the gangway, correct? A. I did put that in my report, yes. Q. All right. The angle that you see there in that picture, is that in violation of some standard? A. One of the crew or something said it was 10 to 15 degrees or something like that. Q. You gave Mr. Coniaris an estimate of an angle looking at a photo. I would like you to give us an estimate of an argle looking at a photo. I would like you to give us an estimate of an argle looking at a photo. I would like you to give us an estimate of an argle looking at Gooking at Exhibit 20. A. It's not 8 degrees. It's a lot more — it's steeper than 8 degrees. MR. RAUWORTH: Again with reservation, your and marken the thinks about that. This steeper than 8 degrees. MR. RAUWORTH: Again with reservation, your and marken the write-up. American Swilth Disabilities Act — in fact, a was a	9	_ · · · · · · · · · · · · · · · · · · ·	9	-
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12 BY MR. RAUWORTH: 12 2 Accessibility: Fishing piers and platforms. 13 THE COURT: May I see what you're looking at? 14 A. Just about. 14 A. Just about. 14 A. Just about. 15 A. Yes, I see a person going up that ramp. That's right. 16 A. Yes, I see a person going up that ramp. That's right. 17 Tights, your Honor. 18 THE COURT: Is it attached to your report? 18 THE WITNESS: Yes, sir. 19 THE WITNESS: It's Note 8 on my - Reference Note 8. 19 Page 51 19 Page	11			- · · · · · · · · · · · · · · · · · · ·
13 Q. Are you able to see the ramp in this picture, sir? 14 A. Just about. 1 Q. All right. Do you see people going up that ramp? 16 A. Yes, I see a person going up that ramp? 17 right. 18 MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. 19 rights, your Honor. 20 BY MR. RAUWORTH: 21 Q. It's your opin ion that the use of this ramp in this picture on this day is unsafe; is that right? 22 A. That's correct. 23 A. That's correct. 24 Q. Okay. And I'm going to put to one side the question of the use of diamond plate. You've talked about that? 25 Page 51 26 A. I did put that in my report, yes. 27 Q. All right. The angle that you see there in that picture, is that in violation of some standard? 28 A. One of the crew or something said it was 10 to 15 degrees or something like that. 29 Q. Well, let me 20 A. It's not 8 degrees. 30 Q. Okay. So is it your opinion 31 MR. RAUWORTH: A Just with the sangle was on this boat. 32 Q. Okay. So is it your opinion 33 MR. RAUWORTH: A Just about. 34 A. Junderstand that somewhere along the line that somewhere along the lin	12			· · · · · · · · · · · · · · · · · · ·
14 A. Just about. 15 Q. All right. Do you see people going up that ramp? 16 A. Yes, I see a person going up that ramp. That's 17 right. 18 MR. RAUWORTH: Okay. So, again, reserving our 19 rights, your Honor. 20 BY MR. RAUWORTH: 21 Q. It's your opin ion that the use of this ramp in this 22 picture on this day is unsafe; is that right? 23 A. That's correct. 24 Q. Okay. And I'm going to put to one side the question 25 of the use of diamond plate. You've talked about that? 26 Page 51 27 A. I sure did. 28 Q. What I would like to talk to you now about is a 29 question of angle because that's the other parameter 29 that I think you disclosed in your report. That is the 29 angle of the gangway, correct? 20 A. I did put that in my report, yes. 21 Q. All right. The angle that you see there in that 22 picture on this day is unsafe; is that right? 23 A. That's correct. 24 Q. Okay. And I'm going to put to one side the question 25 of the use of diamond plate. You've talked about that? 26 Page 51 27 A. I sure did. 28 Q. What I would like to talk to you now about is a 29 question of angle because that's the other parameter 29 that I think you disclosed in your report. That is the 29 angle of the gangway, correct? 20 A. I did put that in my report, yes. 21 Q. All right. The angle that you see there in that 22 picture on this day is unsafe; is that right? 23 A. That's orimet. 24 Q. What I would like to talk to you now about is a 25 question of angle because that's the other parameter 26 that I think you disclosed in your report. That is the 27 angle of the gangway, correct? 28 A. I did put that in my report, yes. 29 A. I did put that in my report, yes. 30 A. I did put that in my report, yes. 40 A. I did put that in my report, yes. 41 Life to the provided in the p	1			
15 Q. All right. Do you see people going up that ramp? 16 A. Yes, I see a person going up that ramp. That's 17 right. 18 MR. RAUWORTH: Okay. So, again, reserving our 19 rights, your Honor. 19 BY MR. RAUWORTH: 20 BY MR. RAUWORTH: 21 Q. It's your opir ion that the use of this ramp in this 22 picture on this day is unsafe; is that right? 23 A. That's correct. 24 Q. Okay. And I'm going to put to one side the question 25 of the use of diamond plate. You've talked about that? 26 Page 51 27 A. I sure did. 28 Q. What I would like to talk to you now about is a 29 question of angle because that's the other parameter 29 that I think you disclosed in your report. That is the 29 angle of the gangiway, correct? 20 All right. The angle that you see there in that 20 picture, is that in violation of some standard? 21 A. I did put that in my report, yes. 22 Q. All right. The angle that you see there in that 23 do not of the crew or something said it was 10 to 15 24 degrees or something like that. 25 degrees or something like that. 26 Q. Well, let me 27 A. One of the crew or something said it was 10 to 15 28 degrees or something like that. 39 Latt the did	1	· · · · · · · · · · · · · · · · · · ·		· · · · · · · · · · · · · · · · · · ·
16 A. Yes, I see a person going up that ramp. That's right. 17 right. 18 MR. RAUWORTH: Okay. So, again, reserving our rights, your Honor. 19 rights, your Honor. 20 BY MR. RAUWORTH: 21 Q. It's your opir ion that the use of this ramp in this picture on this day is unsafe; is that right? 22 A. That's correct. 23 A. That's correct. 24 Q. Okay. And I'm going to put to one side the question of the use of diamond plate. You've talked about that? 25 of the use of diamond plate. You've talked about that? 26 Page 51 27 A. I sure did. 28 Q. What I would like to talk to you now about is a question of angle because that's the other parameter that I think you disclosed in your report. That is the angle of the gangway, correct? 39 A. I did put that in my report, yes. 30 Q. All right. The angle that you see there in that picture, is that ir violation of some standard? 30 A. Tunderstand that somewhere along the line that someone said what the angle was on this boat. 31 Q. Well, let me 32 A. One of the crew or something said it was 10 to 15 degrees or something like that. 31 Q. You gave Mr. Coniaris an estimate of an angle looking at a photo. I would like you to give us an estimate of an ar gle looking at Exhibit 20. 31 A. It's not 8 on my - Reference Note 8. 32 D. All right, sir. It refers to fishing piers and docks, right, the reference you just told us about? 4 A. Yup. 4 A. Accessibility: Fishing piers what's accessibility to a pier" mean? 4 A. Accessibility to a pier" mean? 5 A. Yeah, accessibility to a pier is getting off a boat onto a pier or from a pier onto a boat. 6 Q. Well right. So is it your professional testimony, then, that the OSHA regulations you've just cited here are legally binding on the ore onto, as an expert. 3 THE WITNESS: It's Note 8 on my - Reference Note 8. 4 D. All right, sir. It refers to fishing piers and docks, right, the reference you just told us about? 4 A. Yup. 5 Q. Is that right? Accessibility: Fishing piers what's accessibility to a pier" mean? 5 A. Accessibility to a pier" seal. 6				
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Q. Okay. And I'm going to put to one side the question of the use of diamond plate. You've talked about that? Page 51 A. I sure did. Q. What I would like to talk to you now about is a question of angle because that's the other parameter that I think you disclosed in your report. That is the angle of the gangway, correct? A. I did put that in my report, yes. Q. All right. The angle that you see there in that picture, is that in violation of some standard? A. I understand that somewhere along the line that someone said what the angle was on this boat. Q. Well, let me Q. Well, let me A. One of the crew or something said it was 10 to 15 degrees or something like that. Q. You gave Mr. Coniaris an estimate of an angle looking at a photo. I would like you to give us an estimate of an ar gle looking at Exhibit 20. A. It's not 8 degrees. It's a lot more it's steeper than that. It's steeper than 8 degrees. MR. RAUWORTH: A. Hyp. Q. Is that right? Accessibility: Fishing piers and Page 51 A. Accessibility: Fishing piers what's "accessibility to a pier" mean? Q. I beg your pardon, sir? I think you wrote this, didn't you? A. A. Cacessibility to a pier" mean? Q. I beg your pardon, sir? I think you wrote this, didn't you? A. I'd a pier of from a pier onto a boat. Q. All right. So is it your professional testimony, then, that the OSHA regulations you've just cited here are legally binding on the operator of this vessel? THE COURT: I don't care what he thinks about that. That's for me to decide. He has a right to rely on them, whether they're legally binding on them or not, as an expert. BY MR. RAUWORTH: Q. Well, sir, these regulations, you don't know that they were written to apply to vessels at all, correct? A. They were written to apply to safety. Q. All right. The apier onto a pier of from a pier onto a boat. The COURT: I don't care what he thinks about that. That's for me to decide. He has a right to rely on them, whether they're legally binding on them or not, as an expert. BY MR. RA	1	· · · · · · · · · · · · · · · · · · ·		
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22 BY MR. RAUWORTH: 22 Q. And the Americans with Disabilities Act in fact,	21	- · · · · · · · · · · · · · · · · · · ·	21	•
	22	BY MR. RAUWORTH:	22	
23 Q mat mis mat me angle of that gangway is 23 these regulations are described as Accessibility	23	Q that this that the angle of that gangway is	23	these regulations are described as Accessibility
24 unsafe that's unsafe for all uses; is that right? 24 Regulations, aren't they?	24		24	•
25 A. That's correct. 25 A. Yeah.	25	A. That's correct.	25	

	Page 54		Page 56
1	Q. In other words, whether wheelchairs can get there or	1	Q. You're not sure about that?
2	not?	2	A. I'm asking you what Certificate of Inspection you're
3	A. Well, that's part of it.	3	talking about. Put out by the Coast Guard?
4	THE COURT: That's not irrelevant.	4	Q. I'm asking about the Coast Guard Certificate of
5	MR. RAUWORTH: I beg your pardon?	5	Inspection. You're familiar with that?
6	THE COURT: That's not necessarily irrelevant.	6	A. Absolutely.
7	I'm telling you for the final time: The question of	. 7	-
8	what regulations are binding is going to be decided by	. 8	Q. And what is it, in your understanding, that has to
9	me.	. 9	happen before a vessel is entitled get a Coast Guard Certificate of Inspection?
10	MR. RAUWORTH: Understood, your Honor.	10	•
11	THE COURT: And I understand that he doesn't	11	A. That would take a long time to answer.
12	have an opinion on that subject, but if he did, it	12	Q. Can you summarize it for us?
13			A. What is in the Coast Guard regulations or
14	wouldn't make any difference.	13	Certificate of Inspection? O. What does a vessel
15	MR. RAUWORTH: Okay.	14	`
1	BY MR. RAUWORTH:	15	THE COURT: What does an owner have to do to get
16	Q. Sir, as a matter of fact, the Americans with	16	a Certificate of Inspection?
17	Disabilities Act, there are currently no regulations	17	THE WITNESS: He has to go to the requirements,
18	that apply to passenger vessels; isn't that true?	18	the Coast Guard regulations and usually the
19	THE COURT: If you know.	19	shipbuilder does a lot of this when he builds the ship
20	THE WITNESS: I don't know, really. I remember	20	or boat to make sure it complies with the
21	looking those up and reading them about 8 degrees or 5	21	regulations. The ship owner would have to know that he
22	degrees, I guess it was.	22	is in compliance by maybe not changing anything since
23	THE COURT: There's a difference between saying	23	the ship was built; or if he did, he would have to have
24	something is required as a matter of law, on the one	24	records of what he changed and whether or not that was
25	hand, and as an expert, him saying that he thinks	25	in compliance with the regulations before he could get a
	. Page 55	;	Page 57
1	something is unsafe on the other hand. He has a right	1	Certificate of Inspection.
2	to express an opinion either way.	2	BY MR. RAUWORTH:
3	MR. RAUWORTH: He certainly does, your Honor,	3	Q. Okay. And what's the significance of having a
4	but he's expressed it in terms and I really have to	4	Certificate of Inspection?
5	do this by way of clarifying the difference. He has	5	A. Well, you really have to have it for insurance
6	concluded that it's unsafe because of these standards.	6	purposes and for safety. The Coast Guard won't certify
7	THE COURT: All right. You have a right to say	7	a vessel if it's if it can't pass. It's a safety
8	that's not a proper basis, but there's no point in	8	thing. You don't want a ship to go to sea unless it
9	hammering home that he isn't an expert on the law. I	9	meets the requirements.
10	know that.	10	Q. All right. So a vessel won't get a Certificate of
11	MR. RAUWORTH: Right.	11	Inspection if it doesn't comply with the applicable
12	BY MR. RAUWORTH:	12	regulations, correct?
13	Q. And, in fact, the ADA regulations with regard to	13	A. That's correct.
14	passenger vessels are still in the pipeline and awaiting	14	Q. All right. You didn't undertake to look into
15	commentary by the public?	15	whether the Hurricane II possessed a Certificate of
16	THE COURT: That's the precise type of question	16	Inspection, did you, sir?
17	I'm saying he doesn't have to answer.	17	A. Yeah, I've seen this.
18	MR. RAUWORTH: All right. Fine.	18	Q. Okay. And
1	BY MR. RAUWORTH:	19	A. The Coast Guard inspection
19			
20	Q. You're familiar with the phenomenon of a Certificate	20	THE WITNESS: as I said this before, your
1		20	THE WITNESS: as I said this before, your Honor
20	Q. You're familiar with the phenomenon of a Certificate		
20 21	Q. You're familiar with the phenomenon of a Certificate of Inspection, aren't you, sir?	21	Honor
20 21 22 23 24	Q. You're familiar with the phenomenon of a Certificate of Inspection, aren't you, sir?A. Definitely.	21	Honor A but the Coast Guard uses OSHA for gangplanks,
20 21 22 23	Q. You're familiar with the phenomenon of a Certificate of Inspection, aren't you, sir?A. Definitely.Q. What is that?	21 22 23	Honor A but the Coast Guard uses OSHA for gangplanks. This is a Certificate of Inspection for the boat, the

	Page 58		Page 60
1	with the ship. And it's a certificate of compliance	1	Q. Now, once again, I just want you to have reference
2	it looks like it's in order. But it has nothing to do	2	to the angle of this gangplank in Exhibit 20 that we
3	with the gangplank.	3	looked at before. Have you got that
4	Q. You're not familiar with Coast Guard inspection	4	A. You can almost take a protractor and figure that
5	procedures as to vessels such as the Hurricane II, are	5	out.
6	you, sir? You don't know whether they look at or don't	6	THE COURT: I'm sorry?
7	look at gangplanks?	: 7	THE WITNESS: You can almost take a protractor.
8	A. I just said they don't.	. 8	That drawing is straight on. You can almost take a
9	Q. And	9	protractor and figure out what the angle is.
10	A. OSHA does.	10	THE COURT: I suppose so, yeah.
11	Q. I see. OSHA inspectors come out to vessels like	11	BY MR. RAUWORTH:
12	this and they look at gangplanks?	12	Q. Let me show you another photograph.
13	A. As far as I know. I don't know much about OSHA, I	13	THE COURT: What's the exhibit number?
14	know about the Coast Guard.	: 14	MR. RAUWORTH; We haven't marked this as an
15	Q. I'd like to uncerstand this. You've just told us	15	exhibit, your Honor. It was 21.
16	that OSHA sends out inspectors?	16	THE CLERK: That will be 21.
17	A. I think they do. I don't know that much about OSHA.	17	THE COURT: I asked you yesterday to mark things
18	I know that when we were in the shipyard, the OSHA	18	in advance, please.
19	people were around and they were answering complaints	19	MR. RAUWORTH: I beg your pardon, your Honor, we
20	and things like that.	20	had a bit of a misunderstanding.
21	Q. But you don't know how the supposed requirements for	21	THE CLERK: Okay. That's Exhibit No. 21.
22	gangplanks are er forced, do you?	22	(Exhibit No. 21 was received into evidence.)
23	A. Well, they're enforced by OSHA. The requirements	23	BY MR. RAUWORTH:
24	are spelled out by OSHA.	24	Q. You see the gangplank in Exhibit 21, sir?
25	Q. And	25	A. Yeah, that's pretty neat.
remainded to	Page 59		Page 61
1	A. Now, whether they inspect it or not, I don't know	1	
2	whether they do or not. Whether they go out physically	2	Q. Right. That's going up to an aircraft carrier, isn't it?
3		3	
4	and look at every boat in every harbor, I don't know whether they do that or not.	4	A. Yes, it is. I've been on those gangplanks before.
5			Q. Right. The angle on those is a lot more than in
Ι.	Q. Are you telling us as a matter of your professional	5	Exhibit 20, isn't it?
6	opinion that Coast Guard inspecting officers take no	; 6 ; 7	A. It looks like it, yeah.
ŀ	cognizance of gangplanks or ramps?	1	Q. So
8	A. That's my understanding, yes.	8	A. That's a regular gangplank, though. It's got the
9	Q. Well, what's the basis of your understanding?	9	batons on them and you can walk up it.
11	A. I said that before. The Coast Guard regulations	10	THE COURT: Can I see it, please?
12	throw the requirements for gangplanks onto OSHA.	11	MR. RAUWORTH: Sure. I beg your pardon, your
13	Q. I'm asking you whether when a Coast Guard officer	12	Honor.
14	comes out to do an inspection for a vessel like this,	13	THE WITNESS: That's a real gangplank.
15	whether they take a hands-off attitude with regard to	14	BY MR. RAUWORTH:
16	ramps, gangplan cs? You don't know, sir, correct?	15	Q. But it's unsafe, isn't it?
17	A. No, I don't know. He might, he might not. He	16	A. No.
18	doesn't have to.	17	Q. It's got an angle greater than 8 degrees.
19	Q. Why is it that he doesn't have to?	18	THE COURT: I haven't heard the witness say that
20	THE COUFT: It would be more productive for	19	automatically that makes any gangplank unsafe.
21	somebody to testify what the facts are rather than to	20	BY MR. RAUWORTH:
1	testify that he doesn't know.	21	Q. Well, it doesn't comply with the ADA regulations,
22	MR. RAUV/ORTH: We'll be at that in just a	22	does it?
23 24	moment. Just a moment, your Honor.	23	A. No. In the Navy you don't the Navy doesn't get
25	(Pause.) BY MR. RAUWORTH:	24	involved with the ADA regulations.
. / .	DIWK KAUWUKIH'	25	Q. And so, once again, I guess we're back to it boiling

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1	down to whether the ADA regulations apply or not, right?	1	Q. Well
2	A. I guess so, yeah.	2	A. The 8-degree requirement does not apply to Navy
3	Q. So let me just be sure I understand. You're not	3	ships.
4	saying that it's always improper if a gangway exceeds 8	4	THE COURT: Well, it's not just a question of
5	degrees; is that correct?	5	the requirement, there are other features that make it
6	THE COURT: I wouldn't use the word "improper."	6	safe.
7	Doesn't obey the regulations.	7	THE WITNESS: That's correct.
8	MR. RAUWORTH: Well, I guess I we'll do it	8	THE COURT: Is that right?
9	two ways.	9	THE WITNESS: That's correct. It's the grading,
10	THE COURT: It's not always unsafe.	10	and it's got batons, walking steps. It's altogether
11	MR. RAUWORTH: Sure.	11	different.
12	THE WITNESS: Was I able to find any degrees of	12	BY MR. RAUWORTH:
13	inclination on a Navy gangway?	13	Q. You don't know what's actually on that gangway in
14	BY MR. RAUWORTH:	14	the picture, do you sir?
15	Q. So it is	15	A. I'm pretty sure I do because Navy gangplanks are
16	THE COURT: I'm aware that if you board an	16	pretty standard.
17	airplane via steps, they're usually pretty steep, aren't	17	Q. So in your view, the 8-degree requirement depends on
18	they?	18	whether there is an applicable
19	THE WITNESS: Yes, your Honor.	19	THE COURT: You're beating a dead horse.
20	THE COURT: But there's a difference. There's	20	MR. RAUWORTH: All right.
21	guardrails, there's steps, and so forth and so on.	21	BY MR. RAUWORTH:
22	BY MR. RAUWORTH:	22	Q. You've not found any regulation, Mr. Culver
23	Q. So as a matter of your own opinion, it's not the	23	A. Captain Culver.
24	case that an angle of 8 degrees or greater is always	24	Q. I beg your pardon.
25	unsafe; is that correct, sir?	25	You've not found any regulation that states that
	Page 63		Page 65
1	A. Would you repeat that, please?	1	diamond plate is improper for use in a gangplank?
2	Q. Sure. It's not your opinion that a gangplank angle	2	A. I've never found it as a requirement for a
3	of 8 degrees or greater is always unsafe, correct?	3	gangplank.
4	A. I guess that's probably correct. We're crossing	4	Q. You've never found that it was affirmatively
5	swords here on whether it's a requirement by the Coast	5	required; is that what you mean?
6	Guard, a requirement by the Navy. The Navy has all	6	A. I've never found a requirement that allows that kind
7	different standards on gangplanks that I've cited	7	of
8	here	8	THE COURT: You've never seen anything that says
9	THE COURT: In addition, I'll express my view,	9	in so many words you cannot use diamond plate?
10	which I hope counsel will agree with that, too. That	10	THE WITNESS: No.
11	safety is not just dependent on angles, it's dependent	11	THE COURT: Okay.
12	on what other safeguards there are to protect you.	12	BY MR. RAUWORTH:
13	THE WITNESS: Right.	13	Q. So there's no prohibition you're aware of?
14	MR. RAUWORTH: Sure, Judge. I just want to	14	A. It depends on what spec you're looking at.
15	isolate the point so that we're quite clear on this.	15	Q. I didn't catch that.
16	THE COURT: I think I understand his testimony	16	A. It depends on what specification you're looking at,
17	on it.	17	the specifications for gangplanks. And if you're
18	BY MR. RAUWORTH:	18	looking at the OSHA requirements that I've cited, you'll
19	Q. I think you had an expansive answer. Your answer to	19	build the thing according to the requirements and you'll
20	the question is: No, you don't believe it's always the	20	have a gangway that meets the requirements. Same thing
21	case that a gangway is unsafe if it has an angle of more	21	for the Navy: They have requirements for gangplanks.
22	than 8 degrees?	22	Everyone who builds one these things build them to Navy
23	A. This gangway is perfectly safe, and it's probably	23	requirements.
I			-
24	close to 18, 20 degrees. That's a gangplank that's designed to do this.	24 25	THE COURT: I feel that cross-examination has elicited everything you need.

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 1
           MR. RAUWORTH: Thank you, your Honor.
 2
                 RED RECT EXAMINATION
 3
      BY MR. CONIARIS:
 4
      Q. Sir, referring to Exhibit 3 again, can I ask you a
 5
      hypothetical question?
 6
      A. A hypothetical question?
 7
      Q. Yes. Let's say I called you over to my boat and I
      said, "I'm having people over for Father's Day and I
 8
 9
      don't care what the regulations say and I don't care
10
      about the Coast Guard or the Navy or anything." What I
11
      want you to do, sir, as a consultant with a lot of
12
      experience in these matters, I want you to tell me: Is
13
      my family going to be safe on that gangway?
14
           MR. RAUWORTH: Objection, your Honor.
           THE COURT: Sustained. Sustained.
15
16
      BY MR. CONIARIS:
17
      O. Is this gangway safe?
18
           MR. RAUWORTH: Objection.
19
           THE COURT: He just spent an hour and a half
20
      saying it isn't. You think I don't know that?
21
           MR. CONIARIS: All right. Then I have nothing
22
      further, your Honor.
23
           THE COURT: I would like to take a brief recess,
24
      then.
25
           (The witness is excused.)
 1
                CERTIFICATE
 2
 3
          I, Marcia G. Patrisso, RPR, CRR, Official
 4
      Reporter of the United States District Court, do hereby
 5
      certify that the foregoing transcript constitutes, to
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      of Civil Action No. 05-11267-MEL, Madhu Jain v. A Cape
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               /s/ Marcia G. Patrisso
                MARCIA G. PATRISSO, RPR, CRR
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                Official Court Reporter
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